

**Nursing and Midwifery Council  
Fitness to Practise Committee**

**Substantive Order Review Hearing  
Wednesday 18 September 2024**

Virtual Hearing

**Name of Registrant:** Andrew Graham

**NMC PIN** 86A1262E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – (April 1989)

**Relevant Location:** Torfaen and Cornwall

**Type of case:** Misconduct

**Panel members:** Mark Gower (Chair, Lay member)  
Sharon Aldridge-Bent (Registrant member)  
Anjana Varshani (Lay member)

**Legal Assessor:** Melissa Harrison

**Hearings Coordinator:** Charis Benefo

**Nursing and Midwifery Council:** Represented by Iwona Boesche, Case Presenter

**Mr Graham:** Present and unrepresented

**Order being reviewed:** Conditions of practice order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Conditions of practice order replaced with Suspension order (2 months) to come into immediate effect in accordance with Article 30 (2), order will expire at the end of 29 November 2024**

## Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order. This order will come into effect immediately in accordance with Article 30(2) of the 'Nursing and Midwifery Order 2001' (the Order).

This is an early review of the substantive order imposed on 31 October 2023. This review is being held at the request of the Nursing and Midwifery Council (NMC) due to information from recent correspondence sent by you, which, in the NMC's view, suggests that the current conditions of practice are unworkable.

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 31 October 2023.

The current order is due to expire at the end of 29 November 2024.

The panel is reviewing the order pursuant to 30(2) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

*That you, a registered nurse:*

- 1) *While working as a nurse at Grange University Hospitals Trust Between 15 and 17 April 2021 in relation to Patient A breached professional boundaries in that you:
  - a) *while speaking with Patient A's mother said "I won't give her [Patient A] a kiss from you as that you would be inappropriate" or words to that effect; [found proved]*
  - b) ...
  - c) ...*

d) *had a conversation with Patient A in which you discussed in detail a case involving the abduction and rape of a 13-year old girl; [found proved]*

e) ...

f) ...

g) ...

h) ...

i) ...

j) ...

k) ...

2) ...

3) ...

i) ...

ii) ...

iii) ...

4) *Between 16 September 2021 and 17 September 2021 while working as a nurse at the Royal Cornwall Hospital you breached professional boundaries in that:*

a) *during a conversation with Colleague A discussed child abduction and/or child abuse and/or paedophilia despite being told by Colleague A that the topic caused upset; [found proved]*

b) ...

c) ...

d) *discussed the dark web and/or asked Colleague A if they had been on the dark web and/or referred to incidents of abuse on the dark web; [found proved]*

e) ...

5) ...

6) ...

- i) ...
  - ii) ...
  - iii) ...
- 7) ...
- a) ...
  - b) ...
- 8) ...
- 9) ...
- i) ...
  - ii) ...
  - iii) ...

*AND in light of the above, your fitness to practise is impaired by reason of your misconduct.*

The original panel determined the following with regard to impairment:

*'The panel finds that Patient A and Colleague A were put at a real risk and were caused emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.*

*Regarding insight, the panel considered that you have not provided it with any formalised learning or review in regard to appropriate communication and breaching professional boundaries, nor have you provided it with any testimonies/references of colleagues speaking to your character and your development. Whilst you acknowledged that this was an inappropriate subject matter it was not convinced that you would be able to judge whether other subject matters would be appropriate to discuss with patients or colleagues. Further, the panel was of the view that you had not learned from your mistakes in the first incident in charge 1 and have still not demonstrated what*

*you have learned. It was not convinced that you reflected on your misconduct beyond how the fallout of it has affected you. It considered that you stated that you would now be more careful and cautious about the topics you would be raising at work. However, the panel noted that during your submissions you still deflected responsibility and placed a majority of the blame on Patient A and Colleague A. The panel was therefore of the view that you have only just started to develop insight into your misconduct.*

*The panel was satisfied that the misconduct in this case is capable of being addressed. It took account of [PRIVATE]. However, the panel had no evidence before it, demonstrating that you have strengthened your communication skills or reflected on your breach of professional boundaries.*

*Therefore, the panel is of the view that there is a risk of repetition based on the lack of insight and remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.*

*The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.*

*The panel determined that a finding of impairment on public interest grounds is required. It was of the view that an informed ordinary member of the public would be shocked to find that a registered nurse who had caused emotional and mental distress to a patient and a colleague was not found impaired.*

*In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made where a nurse has caused emotional and mental distress to a patient and a colleague. It therefore also finds your fitness to practise impaired on the grounds of public interest.*

*Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.'*

The original panel determined the following with regard to sanction:

*'The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:*

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

*The panel was of the view that whilst the incidents indicate some attitudinal issues, these are not deep-seated and you stated in your submissions that you are willing to address them.*

*The panel had regard to the fact that these incidents happened in one discrete area of your practice, with regard to your communication style in particular in the context of professional boundaries. It noted that, other than these incidents, you have had an unblemished career of 30 years as a nurse and that no clinical issues have been raised regarding your practice. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.*

*The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you stated that you would be willing to comply with conditions of practice.*

*Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.*

*The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case.*

*In making this decision, the panel carefully considered the submissions of Ms Adeyemi in relation to the suspension order that the NMC was seeking in this case. However, the panel considered that whilst this was not a single instance of misconduct it related to one specific area in your practice where your communication style needs development in the context of professional boundaries. The panel concluded that a suspension order would not support this development. It was also of the view that a conditions of practice order would sufficiently protect the public and address the public interest in your case. It was of the view that there were no deep-seated personality or attitudinal problems that required temporary removal from the register or were incompatible with being on the register. Further, the panel was of the view that you have demonstrated that your insight has developed during the course of the hearing.*

*Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.*

*The panel determined that the following conditions are appropriate and proportionate in this case:*

*'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.*

- 1. You must limit your nursing practice to one substantive employer. This must not be an agency.*
- 2. You must undertake the best available course on professional boundaries and communication as part of your professional development.*
- 3. You must keep a reflective diary which you should discuss with your manager, supervisor or mentor during your monthly meeting.*
- 4. You must work with your manager, supervisor or mentor to create a personal development plan (PDP). Your PDP must address the concerns about your communication style, in particular in the context of professional boundaries and how you communicate sensitive subject matters. You must:*
  - a) Send your case officer a copy of your PDP within 4 weeks of creating it.*
  - b) Meet with your manager, supervisor or mentor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
  - c) Send your case officer a report from your manager, supervisor or mentor 2 weeks before the substantive order review. This report must show your progress towards achieving the aims set out in your PDP and your compliance with condition 2 and 3.*
- 5. You must provide the NMC with a reflective piece detailing how you would implement the learnings into your practice, having completed*



*the courses outlined in condition 4, 2 weeks before the substantive order review hearing.*

6. *You must keep us informed about anywhere you are working by:*
  - a) *Telling your case officer within seven days of accepting or leaving any employment.*
  - b) *Giving your case officer your employer's contact details.*
  
7. *You must keep us informed about anywhere you are studying by:*
  - a) *Telling your case officer within seven days of accepting any course of study.*
  - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
  
8. *You must immediately give a copy of these conditions to:*
  - a) *Any organisation or person you work for.*
  - b) *Any employers you apply to for work (at the time of application).*
  - c) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
  
9. *You must tell your case officer, within seven days of your becoming aware of:*
  - a) *Any clinical incident you are involved in.*
  - b) *Any investigation started against you.*
  - c) *Any disciplinary proceedings taken against you.*

10. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
- a) *Any current or future employer.*
  - b) *Any educational establishment.*
  - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

- *The period of this order is for 12 months.*

*Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.*

*Any future panel reviewing this case would be assisted by:*

- *Your continued engagement with the NMC proceedings.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, which contains the correspondence between you and your case officer, an NMC Monitoring and Compliance Officer dated between 26 October 2023 and 2 September 2024. It has taken account of the submissions made by Ms Boesche on

behalf of the NMC. She informed the panel that this hearing was being held as an early review, and that the NMC was seeking the imposition of a suspension order.

Ms Boesche submitted that it appeared that the original panel on 31 October 2023 did not have the information that you have been barred by the Disclosure & Barring Service (DBS) for 10 years. In addition, she submitted that in light of your correspondence with your NMC case officer, there had been a change in risk, in that the risk had increased.

Ms Boesche submitted that the correspondence from you, which contained your views on the world in general and your position, mirrored the behaviour which formed part of the original allegations. She submitted that you were imposing your personal views and behaviour despite your case officer asking that you limit your correspondence to the present case alone. Ms Boesche submitted that your behaviour potentially caused emotional harm.

The panel also had regard to your submissions. You set out the circumstances of the incident leading to the allegations in April 2021, where you spoke to a patient about a book you had written, after which you say the patient made false allegations about you. You submitted that the references to your correspondence with the NMC case officer mirrored this to a certain degree.

You submitted that you had made it clear to the original panel at the substantive hearing that the DBS had banned you "*for the most remarkable length of time*" considering the nature of your book. You submitted that your NMC case officer did not ask you to stop sending her your written pieces, but that had she asked you to stop, then you would have done so. You submitted that you are being portrayed as a loose canon, but you are just presenting yourself and your view of the world.

Ms Boesche then referred the panel to the email sent by your NMC case officer to you on 28 June 2024, which stated:

‘...

*I would be most grateful if you could kindly stick to sending me documents/evidence and/or updates that directly relates to the conditions of practice order.*

...'

Ms Boesche submitted that your NMC case officer was very tactfully trying to sway you away from sending information which did not relate to the conditions of practice order. She submitted that the case officer's emails have always been courteous and were just limited to saying "*thank you*" and "*received*" in response to your emails. Ms Boesche indicated that she had not seen any other reference to the case officer asking you to stop.

You submitted that there was no sense of upset from your case officer as suggested by Ms Boesche. You submitted that the manipulation from the NMC was that you were asked to stop, even though you were not. You submitted that you were simply guided by your case officer about the requirements of the conditions of practice order.

In response to questions from the panel, you indicated that you were given three months from the date of the DBS Decision Letter to appeal the decision, and that "*the appeal happened at the time*". You told the panel that you have not gone back to the DBS because [PRIVATE]. You submitted that you have "*no power*" and you could not see your position changing.

The panel heard and accepted the advice of the legal assessor.

In response to the legal assessor's advice, you submitted that you were being portrayed as a risk to the public, but you were a nurse for 33 years and posed no threat to public safety. You described a particular shift where you cared for a patient who was in significant pain, and submitted that you were one of the better, more compassionate nurses working in the NHS, "*with empathy way beyond a very large number of nurses who simply do their job*". You submitted that you were not a threat, but you would agree, in hindsight, that you had been far "*too open*" with the patient during the night shift in April 2021.

You accepted that you are impaired, but that this did not extend to you posing a threat to public protection.

You told the panel about [PRIVATE] following your dismissal from your employment. You submitted that you have no intentions of returning to nursing practice, but that you would prefer not to be struck-off the register and that you do not deserve to be struck-off. You submitted that you were a good nurse and that should be recognised.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel had regard to the Final Decision letter from the Disclosure & Barring Service (DBS) dated 1 December 2022, which detailed the decision to include you on the Children's and the Adults' Barred Lists on 30 November 2022. The letter stated that

*'Your inclusion in the Children's Barred List and the Adults' Barred List will last indefinitely... You may ask us to review our decision on the Children's and/or Adults' Barred Lists from 30 November 2032.'*

The panel noted that as a result of your inclusion on the Children's and Adults' Barred Lists, you were unable to practise as a registered nurse, even under the current conditions of practice order.

The panel noted that the original panel found that you had developing insight. At this hearing, the panel had regard to your submissions, as well as your written pieces and the updates on your personal circumstances, contained in your correspondence dated between 26 October 2023 and 24 August 2024. The panel was not satisfied that you had demonstrated a sufficient understanding of why your actions were inappropriate; how you may have caused distress to Patient A and Colleague A in

view of the topic of your conversations; how your actions impacted negatively on the nursing profession; and how you would conduct yourself differently in the future. It determined that your insight was still self-focussed, limited and had not developed further.

In addition, the panel was of the view that your correspondence to the NMC case officer, which included inflammatory comments about foreign nurses, sending images of drinks and [PRIVATE], and making references to Donald Trump, suggested that you appeared to misjudge what is appropriate in conversations. It considered that by submitting that your case officer should have asked you stop, you did not appear to understand that your emails were inappropriate in the first instance. However, the panel was not persuaded that this had been an ongoing disregard of the case officer's request.

The panel considered whether you have taken steps to strengthen your communication skills (in relation to professional boundaries) and took account of the certificate of achievement for completion of a '*Professional Boundaries*' training course dated 31 January 2024.

However, in view of your submissions at the substantive hearing, your correspondence with the NMC case officer and your submissions at this hearing, this panel was not convinced that you would be able to judge subject matters that would be appropriate to discuss with patients or colleagues at this stage.

The panel noted that the concerns in this case related to the breaching of professional boundaries, rather than your clinical practice. However, it took into account that in any event, you have not been able to strengthen your practice as a nurse, even with conditions of practice in place, due to the DBS barring. The panel considered that you have engaged with the NMC by maintaining contact with your case officer. However, you have not complied with any of the conditions or recommendations set by the panel at the substantive hearing such as providing a reflective diary and a personal development plan, nor have you sought to complete training courses to keep your nursing knowledge up to date. Furthermore, you have

not provided any further documentary evidence in support of your remediation or any testimonial evidence.

The original panel determined that you were liable to repeat matters of the kind found proved. Today's panel had heard and received new information in the form of the DBS Decision Letter, your correspondence with the NMC case officer and your submissions. In light of this, this panel determined that you are still liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel was not satisfied that you can currently practise kindly, safely and professionally, due to your propensity to engage in inappropriate communications.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required. The panel concluded that a well-informed member of the public would be concerned if a finding of impairment were not made in this case.

For these reasons, the panel finds that your fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a further conditions of practice order on your registration would still be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel noted that you have been included on the DBS barred lists since November 2022. It also noted your submission that you do not intend to return to nursing practice. In view of this, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order which will replace the current conditions of practice order with immediate effect in accordance with Article 30(2), and will remain in place until the expiry of your current order at the end of 29 November 2024. It considered this to be the most appropriate and proportionate sanction available.

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel was of the view that a period of suspension would allow you to provide the requisite information to support your



developing insight or information about your intentions around your future professional nursing career.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC proceedings.
- Evidence of your professional development.
- A reflective piece addressing why your actions were inappropriate; how you may have caused distress to Patient A and Colleague A in view of the topic of your conversations; how your actions impacted negatively on the nursing profession; and how you would conduct yourself differently in the future.
- Your future intentions regarding your nursing career.

This will be confirmed to you in writing.

That concludes this determination.