

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

**Substantive Order Review Meeting
Wednesday, 25 September 2024**

Virtual Meeting

Name of Registrant: Helen Johnson

NMC PIN: 89A3281E

Part(s) of the register: Registered Nurse – Learning Disabilities – March 1992

Relevant Location: Aberdeenshire

Type of case: Misconduct

Panel members: Denford Chifamba (Chair, registrant member)
Susan Ball (Registrant member)
Michael Glickman (Lay member)

Legal Assessor: Mike Bell

Hearings Coordinator: Jack Dickens

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

Fitness to practise: Impaired

Outcome: **Order to lapse, with a finding of impairment, upon expiry in accordance with Article 30 (1), namely 6 November 2024**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Johnson's registered email address by secure email on 1 August 2024.

The panel took into account that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 23 September 2024 and invited Ms Johnson to provide any written evidence seven days before this date.

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

In the light of all of the information available, the panel was satisfied that Ms Johnson has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules').

Decision and reasons on review of the current order

The panel found that Ms Johnson's Fitness to Practise is impaired and decided to allow the order to lapse.

The current order will expire at the end of 6 November 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 ('the Order') and from that time Ms Johnson's registration will lapse, which means that she will no longer be registered with the Nursing and Midwifery Council.

This is the second review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 7 October 2022. This order was first reviewed on 19 September 2023; that panel imposed a further 12-month conditions of practice order.

The current order is due to expire at the end of 6 November 2024.

The panel is reviewing the order pursuant to Article 30(1) 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) On 07 September 2020: **[Proved in its entirety]**

a) *In respect of Resident A:*

- i. *Did not check in Resident A's medication on admission.*
- ii. *Did not check, or, in the alternative, record checks you had conducted of, Resident A's:*
 - (1) *General condition.*
 - (2) *Skin.*
 - (3) *Vital signs.*
- iii. *Did not start a food and fluid chart for Resident A.*
- iv. *Did not write the MAR charts for Resident A.*
- v. *Did not complete a moving and handling risk assessment in respect of Resident A.*
- vi. *Did not complete an evacuation plan for Resident A.*
- vii. *Did not put in place infection control measures for Covid-19 following Resident A's admission.*

b) *In respect of Resident B:*

- i. *Did not document an unwitnessed fall.*
- ii. *Did not conduct any checks of Resident B, or, in the alternative, record what checks you had conducted and the outcome of those checks.*
- iii. *Did not inform Resident B's next of kin of the fall.*
- iv. *Did not handover that Resident B had suffered an unwitnessed fall.*

2) On 14 December 2020: **[Proved]**

- a) *Did not to put in place infection control measures for Covid-19 following Resident C's admission.*

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

The first reviewing panel determined the following with regard to impairment:

'The panel noted that Ms Johnson's registration on the NMC register expired on 31 March 2022. The panel did not have any information before it attesting to whether, prior to the expiration of her registration, Ms Johnson worked as a registered nurse after the substantive hearing and the conditions of practice order was imposed. The panel did not have any documentation before it to suggest that Ms Johnson had complied with either the conditions of practice order and/or the suggestions made by the original panel. To the contrary, it is apparent that Ms Johnson has ceased communication with the NMC, her Regulator.

In the absence of any evidence of developing insight and/or remediation, the panel determined that Ms Johnson remains 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 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.

For these reasons, the panel finds that Ms Johnson's fitness to practise remains impaired.'

The first reviewing panel determined the following with regard to sanction:

'The panel next considered whether imposing a further conditions of practice order on Ms Johnson's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. It was of the view that a continuation of the current order would allow Ms Johnson a further opportunity to re-engage with the regulatory proceedings, renew her registration, and begin to evidence compliance with the conditions of practice order. The panel determined that continuing the order would continue to protect the public and address the public interest concerns identified.

The panel carefully gave consideration as to whether to impose a suspension order or a striking-off order given the absence of any evidence of compliance with the existing order. However, it determined that to do so would be disproportionate at this time. It would be open to a reviewing panel to impose such an order should there be no material change in Ms Johnson's engagement with the NMC.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Johnson's 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. The documentation consisted of a proof of service bundle of 15 pages and a Masters bundle of 76 pages. Contained within the Masters bundle were the following documents:

- The notice of this meeting dated 01 August 2024.
- The substantive hearing decision letter dated 10 October 2022.
- The first substantive order review meeting decision letter dated 20 September 2023.

- Initial meeting letter to Ms Johnson dated 10 April 2024.

The panel did not have sight of any information or evidence from Ms Johnson.

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

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 Ms Johnson's fitness to practise remains impaired.

The panel had no evidence of any correspondence from Ms Johnson to the NMC. There was no evidence that Ms Johnson has reflected upon the concerns or developed any insight or strengthening of practice. Therefore, the panel were in the same position as the previous reviewing panel in that it could not be satisfied that Ms Johnson has developed any insight or strengthened her practice. The panel was of the view that a risk of repetition and subsequent harm remains. It was of the view that a finding of continuing impairment is necessary on the grounds of public protection.

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 concluded that there continues to be a lack of engagement with the NMC and that this was sufficiently concerning for the public interest to be engaged and as noted above, indicates a continuing risk. The panel also determined that confidence in the profession, and the NMC as their regulator, would be diminished and standards of nursing undermined, if no finding of impairment was to be made. Therefore, the panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

The panel noted that there is a persuasive burden on Ms Johnson to show that she is no longer impaired (*Abrahaem v NMC* [2008] EWHC 183 (Admin) at [23]). The panel was not satisfied that Ms Johnson had discharged her persuasive burden. In the absence of any evidence to persuade the panel that Ms Johnson is no longer impaired, the panel was

of the view that Ms Johnson cannot return to safe practice without restriction at this time. For these reasons, the panel finds that Ms Johnson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Johnson's 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 took into account the NMC's guidance '*Removal from the register when there is a substantive order in place*' (Reference: REV-3h), which was last updated 30 August 2024. This guidance assists substantive order review panels in deciding what action to take where:

- *'a professional hasn't addressed outstanding fitness to practise concerns, and*
- *continuing/imposing a conditions of practice order or suspension order is unlikely to mean the professional will return to safe unrestricted practice within a reasonable period of time.*

[...]

While Suspension Orders and Conditions of Practice Orders can be varied or extended, they are not intended to exist indefinitely. In time the professional must be allowed to practise without restriction or they must leave the register. It is neither in the interests of the public nor the professional's own interests that they are kept in limbo [Annon v NMC [2017] EWHC 1879 (Admin)].'

One way in which a panel can deal with such a case is by allowing the substantive order to lapse but marking that the registrant is impaired. The guidance states this position as follows:

'Where the professional would no longer be on the register but for the order in place, a reviewing panel can allow the order to expire or, at an early review, revoke the order. Professionals in these circumstances will automatically be removed from the register,

or lapse, upon expiry or revocation of the order. The panel will record that the professional remains impaired.

A panel will allow a professional to lapse with impairment where:

- the professional would no longer be on the register but for the order in place;*
- the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- a striking off order isn't appropriate.*

Whilst the intentions or wishes of the professional do not determine whether they should be allowed to lapse, a professional who would no longer be on the register but for the order in place can themselves request an early review to ask that the order is removed.

Panels should be considering lapse with impairment even where the reason for a professional's lack of progress is outside their control. What matters is whether such issues are likely to be resolved in a reasonable period of time.

Circumstances where lapse with impairment is likely to be appropriate include where

- a professional has shown limited engagement and/or insight, but this is reasonably attributable to a health condition; or*
- there has been insufficient progress*
 - in cases involving health or English language; or*
 - in other cases, where the lack of progress is attributable wholly or in significant part to matters outside the professional's control (e.g. health, immigration status, the ability to find work or other personal circumstances).'*

Regarding Ms Johnson's case, the panel has determined that this is the appropriate outcome for the following reasons.

As the panel have determined that her Fitness to Practice is impaired, Ms Johnson would not be on the register but for the continuation of the conditions of practice order as her registration would have expired in March 2022.

The panel noted that Ms Johnson has been subject to a conditions of practice order since 2022. No evidence of compliance with the conditions, remediation, strengthening of practice, or insight has been forthcoming, and Ms Johnson does not appear to be engaging with the NMC. Therefore, the panel concluded that if a further order was to be imposed, it is unlikely that Ms Johnson would make sufficient progress within an applicable time period in order to be able to return to safe unrestricted practice.

The panel was of the view that a striking off order would be disproportionate. It considered that the original concerns in this case would not have attracted a striking off order. The panel also considered that whilst there has been no engagement from Ms Johnson, it has no evidence that this is intended to show a disregard for her regulator.

The substantive conditions of practice order will be allowed to lapse at the end of the current period of imposition, namely the end of 6 November 2024 in accordance with Article 30(1) of the Order. Ms Johnson's Fitness to Practice will be marked as impaired, she will be removed from the register, and she will not be able to practice as a registered nurse. Should Ms Johnson seek readmission to the register, she will be required to show that she is no longer impaired.

That concludes this determination.