

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

**Substantive Order Review Hearing
Thursday 12 September 2024**

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant: Sabitha Joseph

NMC PIN 05K0389O

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (17 November 2005)

Relevant Location: Bolton

Type of case: Lack of competence

Panel members: Lucy Watson (Chair, Registrant member)
Jillian Claire Rashid (Registrant member)
Nilla Varsani (Lay member)

Legal Assessor: Tim Bradbury

Hearings Coordinator: Rebecka Selva

Nursing and Midwifery Council: Represented by Eleanor Gwilym, Case Presenter

Miss Joseph: Not present and not represented at this hearing

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into effect on 16 October 2024 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Joseph was not in attendance and that the Notice of Hearing had been sent to Miss Joseph's registered email address by secure email on 12 August 2024.

Miss Gwilym, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Miss Joseph's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Joseph has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Joseph

The panel next considered whether it should proceed in the absence of Miss Joseph. The panel had regard to Rule 21 and heard the submissions of Ms Gwilym who invited the panel to continue in the absence of Miss Joseph. She submitted that Miss Joseph had voluntarily absented herself.

Ms Gwilym referred the panel to the documentation from Miss Joseph which included an email dated 11 September 2024:

'Thank you for your email. I am unable to attend hearing in person. I am happy for you to proceed with the hearing.'

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Miss Joseph. In reaching this decision, the panel has considered the submissions of Ms Gwilym, the email from Miss Joseph dated 11 September 2024, and the advice of the legal assessor. It had particular regard to relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- Invitation had been given to Miss Joseph to attend virtually as well as in person;
- No application for an adjournment has been made by Miss Joseph;
- Not engaged since October 2023;
- Miss Joseph has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Joseph.

Decision and reasons on review of the substantive order

The panel decided to impose a suspension order for a period of 12 months.

This order will come into effect at the end of 16 October 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 15 September 2023.

The current order is due to expire at the end of 16 October 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, between June 2017 and November 2019 failed to demonstrate the standards of knowledge, skill and judgement required to practise without supervision as a band 5 nurse in that you:

- 1) Inappropriately sent a patient for a scan without being accompanied after they had suffered a hypoglycaemic attack.*
- 2) Incorrectly administered 1g of paracetamol to a patient when they were prescribed 500mg.*
- 3) Failed to administer intravenous Frusemide to a patient.*
- 4) On 20 April 2018 whilst looking after a diabetic patient on an insulin variable rate sliding scale:
 - a) Used the incorrect monitoring form*
 - b) Failed to carry out blood sugar level checks with sufficient regularity.**
- 5) On 20 April 2018 failed to provide assistance to a patient who was then at risk of choking.*
- 6) On 04 May 2018:
 - a) Incorrectly documented a patient had eaten a full meal when the patient had eaten only a small part of the meal.*
 - b) ...*
 - c) Inappropriately continued to feed Patient B when Patient B was not alert and was suffering delayed and reduced swallowing ability.*
 - d) ...**

7) *On 18 June 2018 failed to provide safe and effective patient care in that you failed to monitor and act upon a patient's absence of fluid output.*

8) ...

9) *On a date or dates (unknown) in December 2018:*

a) Failed to administer Fentanyl pain relief to a patient who required it.

b) Pre-completed documentation relating to a patient up to 12 noon before 9.30am.

c) Whilst dealing with the controlled drugs, failed to check the drugs were correct before signing the controlled drug book.

10) *On a date (unknown) between 28 December 2018 and 11 February 2019, in relation to a patient:*

a) Incorrectly calculated the risk assessment for nutrition

b) Incorrectly calculated the Waterlow (risk of pressure sores) score.

11)...

a)...

b)...

12)...

a)...

b)...

13) *On 15 January 2019 failed to carry out GCS neuro observations on a patient who had suffered an unwitnessed fall.*

14) *On 01 March 2019 failed to accurately complete a falls management plan for a patient in that you:*

- a) *Incorrectly recorded a patient fall.*
- b) *Failed to document a risk of climbing over bed rails*
- c) *Incorrectly recorded the patient as having adequate eyesight*
- d)...
- e) *Failed to record an issue with balance.*

15) *On 19 March 2019:*

- a) *Failed to provide safe and effective care in that, when asked by a colleague to confirm a patient's fluid intake, you ripped up the fluid balance sheet and told the colleague to 'write another one out' or words to that effect without confirming the patient's fluid intake.*
- b) ...
- c)...
- d) *Refused to stop feeding a patient who had independent feeding ability when required to do so by a senior colleague.*
- e) *Handled a patient roughly and without care thereby causing the patient to sustain a skin tear.*

16) *On 04 May 2018 took Patient A's capillary blood sugar reading without first cleaning the patient's finger.*

17) ...

a)...

b)...

18) *On 27 September 2019 failed to work professionally in that you completed patient observations independently having not been assessed as competent to do so.*

19) *Between 24 September and 11 October 2019:*

- a) *Failed to communicate appropriately or at all with a patient*

b) Used inappropriate language in that you referred to a patient suffering with dementia as being 'demented'

c)...

20)...

21) Failed to work collaboratively and as part of a team in that you failed, without notifying anyone, to attend for duty on the following dates:

a) 29 July to 16 August 2019

b) 09 September to 23 September 2019

c) 12 October to 15 October 2019.

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

The original panel determined the following with regard to impairment:

'The panel found that patients were put at risk, and some were caused actual physical harm as a result of your lack of competence. Your lack of competence had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel considered that the matters found proved showed a variety of failings, involved a number of patients and occurred over a number of years, therefore they were not isolated incidents. The panel also noted the high level of support provided to you by the Trust during the relevant times.

It went on to consider whether there is a risk of repetition and in doing so it assessed your current insight, remorse and remediation. The panel had no evidence before it to demonstrate any insight or remediation taken. It noted that you had not provided any evidence of reflection and that you have not worked since your dismissal from the Trust and therefore have not had any opportunity to strengthen your practice.

In relation to remorse, the panel found no evidence of this, either by way of written reflection or in your recent oral evidence.

The panel considered that the lack of competence in this case is capable of remediation. However, the panel has received no evidence that you have remediated your practice. Accordingly, it cannot be said that this lack is highly unlikely to be repeated.

The panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 concluded that public confidence in the profession would be undermined if a finding of current impairment were not made in this case and 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:

'Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement. The panel also had regard to 'The Code: Professional standards of practice and behaviour for nurses and

midwives 2015' (the Code) and identified following areas to have been breached in this case: 1.1, 1.2, 1.4, 2.1, 2.6, 4.1, 6.2, 8.2, 8.5, 9.2, 10.2, 10.3, 10.5, 13.1, 15.2, 18.2, 19.1, 19.4, 20.1, 20.3, 20.5, and 20.8.

The panel took into account the following aggravating features:

- You demonstrated a consistent lack of competence in a wide range of fundamental nursing practice with a large number of patients over a considerable period of time*
- Your lack of competence put patients at harm and / or at risk of suffering harm.*
- You demonstrated a lack of insight into your failings*
- You demonstrated an inability to maintain or complete the Trust's capability plans*

The panel also took into account the following mitigating features:

- [PRIVATE]*
- You achieved some of your action plans over some period of time such as the administration of medication and the taking and recording of blood pressure*
- Frequent changes in respect to action plan management*

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 lack of competence was not at the lower end of the spectrum

and that a caution order would be inappropriate in view of the public safety 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 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 relation to when a conditions of practice order is appropriate, in particular:

- Identifiable areas of your practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to retraining;*
- 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 is of the view that there are no practical or workable conditions of practice that could be formulated given the nature of the charges in this case, the wide range of failures in fundamental nursing practice, the number of patients involved and the period of time over which your failings occurred. The panel found that the charges and your subsequent interaction with these proceedings provide clear evidence of a general, indeed very significant, lack of competence. There are no specific identifiable areas of retraining that could be said to address this general lack of competence at this stage. The serious incidents outlined in the charges occurred over two years whilst you were subject to supervision and were working to agreed action plans aimed at improving your performance. You lack insight into your failures and have failed to express remorse. The panel find that when giving evidence you expressed a resentment in relation to the supervision you were previously receiving. The panel consider that these factors give reason to doubt that you would comply with conditions or respond positively to retraining. Therefore a conditions of practice order would not protect the public.

The panel considered the SG on when suspension orders are appropriate and in particular took into account this factor:

- In cases where the only issue relates to your lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

In light of this the panel decided that a suspension order was the only appropriate sanction in this case.

The panel did not go on to consider whether to impose a striking off order as this sanction is not available for use at this time.

...

Any future panel reviewing this case would be assisted by:

- An indication of your intention to continue to be a registered nurse*
- Your attendance at any future hearing*
- Whether you have applied for or started a return to practise course*
- Whether you have completed and passed an NMC recommended English language test*
- You providing any relevant references*
- You providing information about any paid or unpaid work relevant to the healthcare sector you have undertaken*
- You providing a reflective piece covering your failings identified in this determination'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Joseph'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, including the NMC bundle. It has taken account of the submissions made by Ms Gwilym on behalf of the NMC.

Ms Gwilym referred the panel to the background of the case.

Ms Gwilym submitted that Miss Joseph's incompetence is on a significant scale and with regard to the charges, covered a wide range of skills essential for a registered nurse namely:

- communication;
- ability to identify and respond to deteriorating patients;
- ability to provide personal care without causing pain to patients;
- lack of professional behaviour;
- unwillingness to follow instructions or assist colleagues with patients;
- failure to respond or assist when there were obvious signs of deterioration in the patients in their care;
- lack of empathy and communication skills;
- failure to respond to patients presenting with pain or discomfort;
- lack of basic understanding of the conditions and presentation of the patient group they cared for and their inability to care plan accordingly; and
- record keeping.

Ms Gwilym submitted that Miss Joseph's practice is still impaired as there is no information before the panel today to suggest that any of the original panel's recommendations have been addressed for this review today. She reminded the panel that the onus to address past impairment is on Miss Joseph.

Ms Gwilym referred the panel to the on-table documents to submit that Miss Joseph has shown a lack of engagement - her last contact with the NMC having been a telephone call on 19 October 2023.

Ms Gwilym invited the panel to impose a further 12-month suspension order given there is no information before the panel today to suggest that Miss Joseph is not impaired. She submitted that a conditions of practice order would not sufficiently protect the public as Miss Joseph has already gone through two stages of informal support and four stages of a formal capability plan both via the Trust.

In response to panel questions, Ms Gwilym clarified that during the phone call on 19 October 2023, Miss Joseph explained that she could not get accepted for a return to practice course due to her suspension.

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 Miss Joseph's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Joseph had a lack of insight. At this hearing, the panel had no evidence of any insight or reflective statement before it.

In its consideration of whether Miss Joseph has taken steps to strengthen her practice, the panel did not have any evidence of any relevant or additional training that Miss Joseph has undertaken. The panel noted that Miss Joseph could not be accepted into a return to practice course given her suspension, however, it considered that Miss Joseph could have provided a statement addressing insight into her lack of competence and how it could have affected patients, colleagues and the reputation of the nursing profession.

The original panel determined that Miss Joseph was liable to repeat matters of the kind found proved. Today's panel has received no evidence of Miss Joseph having strengthened her practice as there is no information regarding her current employment or any relevant training, hence there is no change or improvement in Miss Joseph's impairment.

In light of this, this panel determined that Miss Joseph is still likely 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, given the wide range of Miss Joseph's competence across all aspects of nursing practice over an 18-month period.

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

Decision and reasons on sanction

Having found Miss Joseph'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 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 Miss Joseph's 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 Miss Joseph's 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 conditions of practice order on Miss Joseph's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Miss Joseph's lack of competence. The panel acknowledged that the Trust tried, over a sustained period, to support Miss Joseph which further indicated to the panel that a conditions of practice order would not be workable given the wide-ranging nature of the lack of competence which took place over a long period of time during supervised practice along with continued lack of insight.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Joseph further time to fully reflect on her previous failings. The panel concluded that a further 12-month suspension order would be the appropriate and proportionate response and would afford Miss Joseph adequate time to further develop her insight and take steps to strengthen their practice. It would also give Miss Joseph an opportunity to approach past and current health professionals to attest to her professional practice in her workplace assignments since the substantive hearing.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. It considered this to be the most appropriate and proportionate sanction available.

The panel did not consider the sanction of a striking off order, as Miss Joseph had not been continually suspended for two years, so this was not applicable. At the following review, the panel will have the availability of all sanctions including striking off order.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 16 October 2024 in accordance with Article 30(1).

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 attendance, virtually or in-person, at any future hearing.
- An indication of your intention to continue to be a registered nurse.
- Evidence of any completed training/courses.
- Information on any current employment or voluntary work.
- References from your current employer (if applicable).
- A reflective statement which addresses the impact of your actions from your lack of competence and its effects on colleagues, public and nursing profession.

This will be confirmed to Miss Joseph in writing.

That concludes this determination.