

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

**Substantive Order Review Hearing
Thursday, 13 February 2025**

Virtual Hearing

Name of Registrant:	Karen Louise Vergen
NMC PIN	17A0164E
Part(s) of the register:	Registered Nurse—Sub Part 1 Adult Nursing—February 2017
Relevant Location:	England
Type of case:	Misconduct
Panel members:	Nicola Dale (Chair) Charlotte Cooley (Registrant member) Jane McLeod (Lay member)
Legal Assessor:	Gaon Hart
Hearings Coordinator:	Damie Sanni
Nursing and Midwifery Council:	Represented by Eilish Lindsay, Case Presenter
Ms Karen Louise Vergen	Not present and not represented
Order being reviewed:	Suspension Order (6 Months)
Fitness to practise:	Impaired
Outcome:	Striking-Off Order to come into effect on 25 March 2025 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 Ms Vergen was not in attendance and that the Notice of Hearing had been sent to Ms Vergen's registered email address by secure email on 13 January 2025.

Ms Lindsay, 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 considered that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Vergen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

The panel noted that the witness statement in support of the proof of service was signed *per procuracionem*. However, it found that the further documents within the proof of service bundle demonstrated evidence of service and considered the cases of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) and *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Ms Winifred Nompumelelo Jozi* [2015] EWHC 764 (Admin) (with regard to the panel's discretion).

The panel accepted on the balance of probabilities and with due consideration for a fair hearing, the hearsay proof of service documents.

In the light of all the information available, the panel was satisfied that Ms Vergen 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 Ms Vergen

The panel next considered whether it should proceed in the absence of Ms Vergen. The panel had regard to Rule 21 and heard the submissions of Ms Lindsay who invited the panel to continue in the absence of Ms Vergen. She submitted that Ms Vergen had voluntarily absented herself and has requested no adjournment.

Ms Lindsay further submitted that there had been no engagement at all by Ms Vergen with the NMC in relation to these proceedings and, therefore, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

In addition, Ms Lindsay then submitted that it is appropriate that the panel proceeds in Ms Vergen's absence because it is in public interest to deal with this case expeditiously.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Ms Vergen.

In reaching this decision, the panel considered the submissions of Ms Lindsay and the advice of the legal assessor. It had regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that

- Ms Vergen was apparently voluntarily absent from today's hearing.
- No application for an adjournment had been made by Ms Vergen.
- Ms Vergen has not engaged with the NMC since this matter has been considered by fitness to practice committees and has not responded to any of the letters sent to her about this hearing.
- 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 decided that it is fair to proceed in the absence of Ms Vergen.

Decision and reasons on review of the current order

The panel decided to replace the current suspension order with a striking off order. This order will come into effect upon expiration of the current suspension order on 25 March 2025, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 23 February 2024. This was reviewed on 16 August 2024 and the suspension order was extended for a further period of six months.

The current order is due to expire at the end of 25 March 2025.

The panel reviewed 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. Between July 2021 and August 2021;

a. Took Patient A's personal contact details.

b. Initiated contact with Patient A without clinical justification.

c. Maintained contact with Patient A without clinical justification.

d. Met with Patient A on one or more occasion without clinical justification.

e. Allowed Patient A to kiss you.

2. *Your actions at any or all of the charges above were inappropriate in that you failed to maintain professional boundaries.*

3. ...

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

The original panel determined the following regarding impairment:

'The panel next went on to decide if as a result of the misconduct, Ms Vergen's fitness to practise is currently impaired. In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel also looked at Ms Vergen's misconduct in relation to the test set out in the case of Grant:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) ...

The panel considered whether Ms Vergen's actions had caused harm to any patients and in particular Patient A. The panel had only text conversations before it from Patient A and were unable to place great weight on the context and nature of these texts. The panel therefore concluded that there was inadequate evidence before it to indicate that any harm had been caused to any patients including Patient A.

The panel did determine that Ms Vergen's actions did bring the nursing profession into disrepute and that she had breached a fundamental tenet of the profession.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether Ms Vergen has taken steps to strengthen her practice.

There was evidence of limited insight within Ms Vergen's email dated 18 January 2022. Plainly this matter has had a great effect upon her, which makes it less likely that she would repeat such an action. However, Ms Vergen failed to provide any detail or assurances to the panel that she would act differently in future. There was no evidence before the panel of training or professional development in respect of professional boundaries

or the danger posed by manipulative patients and, as Ms Vergen had not attended the hearing, the panel was deprived of the opportunity to hear from her. Given the lack of demonstrated insight and remediation, the panel considered that there was a risk that Ms Vergen would not act differently if she were to find herself in a similar situation again.

Although the panel found that in this case there was no harm to patients, should similar circumstances happen again, patients might come to harm. Accordingly, while the panel found limb a) of Grant not to be engaged for the past, it was engaged for the future. Therefore, the panel determined that a finding of impairment was necessary for the protection of the public.

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 also determined that a finding of current impairment is required on public interest grounds. The panel concluded that public confidence in the profession, as well as the NMC, would be undermined if a finding of impairment were not made in this case given the context of the prison setting in which the issues initially arose.

Having regard to all of the above, the panel was satisfied that Ms Vergen's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'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 an order that does not restrict Ms Vergen'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 Ms Vergen'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 placing conditions of practice on Ms Vergen'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 took into account the SG [sic: Sanctions Guidance], 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 had no information about Ms Vergen's current work circumstances.

The panel may have been minded to impose conditions but was concerned that the relationship with Patient A was outside of the work environment. While it may have been possible to devise conditions, the panel did not know whether Ms Vergen was working as a nurse, and if so, in what kind of environment. Without this information, the panel was not confident that that any conditions imposed could be monitored or assessed and would therefore be effective. Without Ms Vergen's participation in this hearing, the panel did not know if she would be willing to engage with any conditions imposed. For these reasons, the panel decided that a conditions of practice order was not appropriate.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...*
- ...*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

Balancing all of the factors the panel concluded that a suspension order would be the appropriate and proportionate sanction in this case. The panel determined that a suspension order for a period of six months was

appropriate not only to mark the seriousness but to also provide Ms Vergen with time to reflect, fully develop her insight and begin addressing the issues identified by the panel around maintaining professional boundaries. This period of suspension will allow Ms Vergen time to make efforts to strengthen her practice and prepare to meet with a review panel, where she will have an opportunity to portray her progress and potentially return to nursing unrestricted.

The panel noted the hardship such an order may cause Ms Vergen. However, this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information apparent from the documentation provided to 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 Ms Vergen's case to impose a striking-off order.

In making this decision, the panel carefully considered the submissions of Ms Patel in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a striking-off order would be wholly disproportionate as the misconduct is not of a sexual nature and the breach of professional boundaries was an isolated incident.

At 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:

- *Ms Vergen's attendance and participation.*
- *A reflective statement addressing the breach of professional boundaries and the possible risks to patients and the reputation of the nursing profession.*
- *Recent training relevant to professional boundaries.*
- *Up-to-date references and testimonials.'*

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

'The panel has considered carefully whether Ms Vergen'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. The NMC guidance DMA-1 sets out that the question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

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 Rubbi on behalf of the NMC.

Ms Rubbi outlined the background to the case. She submitted that there has been no evidence from Ms Vergen addressing the substantive hearing panel's concerns. Ms Rubbi submitted that Ms Vergen has not engaged with the NMC regarding these proceedings and has not provided any evidence insight, remorse or efforts to strengthen her practice to this panel.

Ms Rubbi submitted that Ms Vergen's fitness to practice is still currently impaired. She submitted that the most appropriate and proportionate order is a suspension order for a period of six months.

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 Vergen's fitness to practise remains impaired. The panel noted that the substantive hearing panel that considered the case in February 2024 found that whilst Ms Vergen's actions caused no harm to patients should 'similar circumstances happen again, patients might come to harm.' This panel noted that Ms Vergen has not engaged with these proceedings. The panel has had no evidence of any insight, remorse or strengthening of practice by Ms Vergen. It determined that there has been no material change of circumstances since the substantive hearing and that a risk of repetition remains. 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 Vergen's fitness to practise remains impaired.'

The first reviewing panel determined the following regarding sanction:

'Having found Ms Vergen'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 Ms Vergen'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 Ms Vergen'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 placing a conditions of practice order on Ms Vergen'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 Ms Vergen's misconduct. Further, given that Ms Vergen has not engaged with these proceedings, the panel was not satisfied that she would comply with any conditions.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Ms Vergen further time to fully reflect on her previous misconduct. The panel concluded that a further six month suspension order would be the appropriate and proportionate response and would afford Ms Vergen adequate time to develop her insight, take steps to remediate and strengthen her practice and/or reflect upon her intentions with regard to pursuing her career in nursing.

The panel noted that a striking off order would be disproportionate at this stage as Ms Vergen's misconduct was not fundamentally incompatible with remaining on the NMC register.

The panel therefore determined that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest.

This suspension order will take effect upon the expiry of the current suspension order, namely at the end of 25 September 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:

- Ms Vergen's attendance and participation.*

- *Correspondence from Ms Vergen indicating whether she intends to continue her nursing career.*
- *A reflective statement addressing the breach of professional boundaries and the possible risks to patients and the reputation of the nursing profession.*
- *Recent training relevant to professional boundaries.*
- *Up-to-date references and testimonials.*

Submissions on impairment and sanction

The panel took account of the submissions made by Ms Lindsay on behalf of the NMC. She submitted that Ms Vergen's fitness to practice is still impaired on both grounds of public protection and public interest. She also submitted that Ms Vergen participated at neither the substantive hearing nor subsequent hearings and she had not complied with the recommendations of the last panel.

Ms Lindsay referred the panel to Article 30 (1) of the Order and reemphasised that the purpose of a review is to assess whether the substantive order made has been complied with and whether the matter leading to the finding of misconduct and impairment have been remediated. She also submitted that the persuasive burden to prove this lies on Ms Vergen. Given that there is no information before the panel and no representation from Ms Vergen, the persuasive burden on her has not been discharged.

Ms Lindsay submitted that no insight had been demonstrated and there was no information as to the current practice of Ms Vergen and any steps taken by her to remediate the concerns.

Regarding sanction, Ms Lindsay submitted that it was a matter for the panel to determine. She however pointed out that taking no further action or giving a condition of practice order would not be appropriate in this case. She further submitted that the two previous suspension orders had not prompted Ms Vergen's engagement and therefore a further suspension order would not address her impairment.

The NMC's submission was that Ms Vergen has shown no remorse or insight and no engagement. The risk of repetition remains and as such invited the panel to make a striking off order on the grounds of both public protection and public interest grounds, and to uphold professional standards.

Decision and reasons on current impairment

The panel had regard to all the documentation before it and the submissions made by Ms Lindsay on behalf of the NMC.

The panel considered carefully whether Ms Vergen's fitness to practise remains impaired. While 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. The NMC Guidance DMA-1 sets out the question that would help the panel determine fitness to practice is 'can the nurse practise kindly, safely and professionally?' In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. While it noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

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 Vergen's fitness to practise remains impaired.

The panel noted that there was no information before it of any insight, remorse, or strengthening of practice since the last review nor any information concerning the previous panel's recommendations and there had been no engagement from Ms Vergen. The panel found that in light of there being no material change

in the circumstances, the risk of repetition remains, and the panel therefore determined that a finding of continued impairment is necessary on the ground of public protection.

The panel further noted that the persuasive burden is on Ms Vergen to assist the panel in deciding whether she is no longer impaired and that she has been invited to do this on two occasions and she has not responded on either occasion.

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, given the seriousness of this case and the comments made above, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Ms Vergen'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 considered 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 Ms Vergen'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 Ms Vergen'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 for the same reasons above.

The panel next considered whether a conditions of practice on Ms Vergen'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 was not able to formulate conditions of practice that would adequately address the concerns relating to Ms Vergen's misconduct. The panel also bore in mind the seriousness of the facts found proved at the original hearing and the lack of engagement, and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that, despite two previous periods of suspension, Ms Vergen has not engaged, has not shown any insight, remorse for her misconduct or strengthening of practice. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Ms Vergen from unrestricted practice and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel considered the potential for enabling the current suspension order to lapse and considered NMC Guidance REV-3h. The panel noted the references

to 'health', 'language' and 'matters outside the professional's control' and, although they appreciated that the Ms Vergen would no longer be on the register but for the suspension order currently in place, it considered that a striking off order is the most appropriate sanction in the circumstances.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 25 March 2025 in accordance with Article 30(1).

This decision will be confirmed to Ms Vergen in writing.

That concludes this determination.