

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

**Substantive Order Review Hearing
Tuesday, 11 March 2025**

Virtual Hearing

Name of Registrant:	Annita Nyasha Nyabunze
NMC PIN	11E0374E
Part(s) of the register:	Registered Nurse – Sub Part 1 Learning Disabilities Nursing – December 2011
Relevant Location:	Norfolk
Type of case:	Misconduct
Panel members:	Phil Lowe (Chair, Lay member) Richard Luck (Registrant member) Kitty Grant (Lay member)
Legal Assessor:	Michael Levy
Hearings Coordinator:	Ekaette Uwa
Nursing and Midwifery Council:	Represented by Simran Ghotra, Case Presenter
Ms Nyabunze:	Present and represented by Tom Buxton, instructed by the Royal College of Nursing (RCN)
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (nine months) to come into effect immediately in accordance with Article 30 (2)

Decision and reasons on review of the substantive order

The panel decided to vary the current conditions of practice order and extend it for a period of nine months.

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 21 May 2024. This review is being held at your request on the grounds that condition 1 from the substantive order is unworkable.

The panel is also considering new information regarding a potential breach of condition 5a, specifically your failure to inform the NMC within seven working days of accepting or leaving any employment.

The current order is due to expire at the end of 18 June 2025.

The panel is reviewing the order pursuant to Article 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, on 28 April 2018, in relation to Resident A:

- 1) Failed to commence and/or instruct others to commence cardiopulmonary resuscitation when it would have been clinically appropriate in the light of Resident A's presentation.*
- 2) As the nurse in charge, failed to demonstrate leadership throughout the emergency in that:*
 - a) You failed to manage the clinical team in light of the situation;*
 - b) You failed to allocate tasks appropriately in light of the competencies and experiences of the clinical team.*

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

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

'The panel next went on to decide if as a result of the misconduct, your 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'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) ...'*

For reasons already set out above in relation to misconduct, the panel determined that limbs a, b and c were engaged by your misconduct, both in the past and in the future.

The panel concluded that you had in the past acted so as to put Resident A at unwarranted risk of harm by failing to do immediate CPR and/or ensuring the staff under your leadership took appropriate steps in the management of the emergency with Resident A.

The panel determined that your failings breached fundamental tenets of nursing practice and that your misconduct is liable to bring the nursing profession into disrepute. In the panel's judgement, the public do not expect a nurse to act as you did as they require nurses to adhere at all times to the appropriate professional standards and to safeguard the health and wellbeing of patients.

The panel recognised that it must make an assessment of your fitness to practise as of today. This involves not only taking account of past misconduct but also what

has happened since the misconduct came to light and whether you would pose a risk of repeating the misconduct in the future.

The panel had regard to the principles set out in the case of Ronald Jack Cohen v General Medical Council [2008] EWHC 581 (Admin) and considered whether the concerns identified in your nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether you have provided evidence of insight and remorse.

Regarding insight the panel noted that you had denied the charges. It recognised your right to contest the charges and noted that upon reading the panel's determination regarding facts, you now accept the facts found proved amount to misconduct and impairment.

The panel noted that, at this stage, you have not provided a detailed reflective statement. While the panel acknowledged that you accept misconduct, it did not have a detailed recognition from you as to the impact your misconduct had on Resident A, her family, your colleagues and the nursing profession. Additionally, the panel do not have any information which would demonstrate how you would approach similar circumstances in the future.

The panel also considered that it had received no evidence as to your remorse in failing to respond to an emergency situation. It noted that during your oral evidence on the facts, you appeared to reiterate that your response to the emergency situation was correct.

Nevertheless, the panel recognised that you have accepted that your actions amounted to serious misconduct and that your fitness to practice is currently impaired. As a result, the panel determined that you have shown some limited insight, but this is early in its development.

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 or not you had taken steps to strengthen your practice. The panel took into account the training certificates you provided and noted that you are up to date with your basic life support and intermediate life support training.

The panel also took account of the testimonials you had provided. It noted that a HCA, in a testimonial dated 10 May 2024, stated:

“She is a dedicated and compassionate caregiver, who seamlessly doubles as a team leader and a team player.”

The panel was of the view that this was a limited indication of your leadership and was not specific to an emergency or stressful situation.

The panel acknowledged that, as evidenced by the testimonials you had provided, in your general nursing practice you could practice kindly, safely and professionally. However, it noted that you had not presented sufficient evidence of the practical progress you have made in addressing the weaknesses in your performance when dealing with critical situations nor have you demonstrated steps taken to strengthen your practice and remedy the concerns identified in relation to the matters in this hearing.

The panel had no current information before it to demonstrate your abilities in an emergency situation, your leadership skills as a registered nurse or that would reassure the panel that you would act as expected in a similar situation. It was therefore not persuaded that, in an emergency situation, you would be able to practice safely and professionally.

The panel concluded that that while your insight is limited but developing, it considered that your lack of remediation means there remains a risk of repetition of the misconduct found proved. The panel therefore determined 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 was satisfied that, having regard to the nature of the misconduct in this case, “the need to uphold proper professional standards and public confidence in the profession would be undermined” if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be very concerned if your fitness to practise were not found to be impaired.

For all the above reasons the panel determined that a finding of impairment on public interest grounds is required.

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 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 would be willing to comply with conditions of practice.

The panel had regard to the fact that this incident happened a long time ago and that, other than this incident, you have had an unblemished career of 12 years as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to safe practice as a nurse.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order and the public can be sufficiently protected by this order.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will also 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.

In making this decision, the panel carefully considered the submissions of Mr Gruchy in relation to the sanction that the NMC was seeking in this case. However, the panel considered that to impose a suspension order or a striking-off order would be disproportionate and would not be a reasonable response in the circumstances of your case.

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 restrict your practice to a single substantive employer, currently Hertfordshire Partnership University Foundation Trust. You must not work for an agency.*
- 2) *You must ensure that you are not the nurse in charge and that you are supervised by a registered nurse at any time you are working. Your supervision must consist of:*
 - *Working at all times on the same shift as, but not always directly observed by, a registered nurse.*
- 3) *You must work with your clinical supervisor to create a personal development plan (PDP). Your PDP must include:*
 - a) *a repeat of your intermediate life support training, which is to include a formal written assessment from your trainer*
 - b) *feedback and development regarding assertiveness*
 - c) *feedback and development regarding leadership skills particularly in any urgent or emergency situations.*

You must:

- *Send your case officer a copy of your PDP prior to the review of this order.*
 - *Send your case officer a report from your clinical supervisor prior to the review of this order. This report must show your progress towards achieving the aims set out in your PDP.*
- 4) *You must engage with your clinical supervisor on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:*
 - *Meeting with your clinical supervisor at least every three months to discuss your progress towards achieving the aims set out in your PDP.*
 - *Monthly reflective discussions with your clinical supervisor.*

- 5) *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.*
- 6) *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.*
- 7) *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.*
- 8) *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.*
- 9) *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 for another order.

Any future panel reviewing this case would be assisted by:

- *A written reflective piece using a recognised model of reflection*
- *Up-to-date training records • Your continued engagement with the NMC*
- *Your attendance at any future review hearing of this order.'*

Fact finding in relation to an alleged breach of condition 5a

Prior to conducting the substantive order review, the panel was asked to consider and determine facts in respect of an alleged breach of the current order. The NMC alleges that this concern, if proved, amounts to a breach of your current conditions of practice. The alleged breach is:

'Failure to notify your case officer about anywhere you are working within seven days of accepting or leaving any employment.'

Ms Ghotra submitted that you did not notify the NMC of the change in your employment as required by the conditions imposed on your registration. She acknowledged that you had notified the Royal College of Nursing (RCN) as evidenced in your bundle but submitted that this did not satisfy the requirement of direct notification to the NMC.

She described the breach as technical rather than deliberate. Ms Ghotra drew the panel's attention to the email chain from you to the RCN and noted that there was no evidence that you had deliberately sought to mislead the NMC.

Mr Buxton on your behalf, acknowledged that there was indeed a failure to notify the NMC of your change in employment but contended that you had acted in good faith by informing the RCN, which had explicitly instructed you not to contact the NMC directly, warning you that in doing so, it would reserve the right to withdraw its representation.

He referred the panel to the witness statement of Witness 1, confirming this sequence of events and arguing that any failure to notify the NMC was an administrative oversight rather than your own failing.

Both parties agreed that the breach was a technicality rather than a deliberate act of non-compliance.

The panel's decision and reasons on the alleged breach

The panel recognized that the factual dispute before it was not a formal charge but a matter relevant to its subsequent consideration of current impairment and sanction during the substantive order review. The panel was mindful of the burden and standard of proof applicable to findings of fact. It noted that the NMC bears the responsibility to prove the alleged concern on the balance of probabilities. This standard requires the panel to determine whether it is more likely than not that the alleged facts occurred as alleged.

The panel has had regard to all the documentation before it, including evidence from your bundle particularly your email correspondence with the RCN and the witness statement on oath of Witness 1.

The panel also took into account Ms Ghotra's submissions as well as Mr Buxton's submissions on your behalf.

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

The panel noted that condition 5a required you to inform the NMC within seven days of accepting or leaving any employment. It was not disputed that you did not directly inform the NMC within the required timeframe. However, the panel accepted that you had notified the RCN, which explicitly advised you not to contact the NMC directly or risk losing its representation.

The panel was satisfied that you had acted in good faith and that the failure to notify the NMC directly resulted from circumstances beyond your control rather than deliberate non-compliance.

Accordingly, the panel found that you had breached condition 5a but did not do so deliberately or negligently. It concluded that the breach should not be considered an aggravating factor when assessing impairment and sanction at this hearing.

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 ability to practice 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 evidence before it, including the NMC bundle, and the documents contained in your bundle.

It has taken account of the submissions made by Ms Ghotra on behalf of the NMC. She submitted that notwithstanding the technical nature of the breach of conditions 5a, that your fitness to practise remains impaired.

She noted that while you had engaged with the process and demonstrated some remediation and insight, you had not worked as a registered nurse for the past eight months, making it difficult to assess whether you had fully addressed the clinical concerns identified by the original panel.

Ms Ghotra acknowledged that the evidence provided in your bundle contained details of training undertaken by you but argued that this did not amount to a structured PDP. She submitted the absence of such a document made it difficult to assess if you had fully engaged with the remediation process.

Ms Ghotra further submitted that you failed to sufficiently demonstrate your ability to manage stress, lead effectively and respond to emergency situations. She urged the panel to consider you impaired on both public protection and public interest grounds.

Ms Ghotra stated that in considering appropriate sanctions the NMC was of the view that revoking the conditions of practice order would be inappropriate, given the lack of evidence of you working recently as a registered nurse.

The panel also had regard to submissions from Mr Buxton on your behalf.

He submitted that your fitness to practise was no longer impaired and invited the panel to find that you have sufficiently remediated the concerns identified by the original panel.

Mr Buxton acknowledged that you had not worked as a registered nurse for the past eight months, but argued that this was not due to any failings on your part, but rather due to the restrictive nature of your current conditions of practice, which prevented you from securing a suitable position. He submitted that you were unsuccessful at working at a nursing role because employers were unwilling or unable to accommodate the conditions imposed on your practice.

Mr Buxton further submitted that you had demonstrated significant insight and taken proactive steps to address the concerns raised by the original panel. He referred the panel to documentation in your bundle evidencing relevant training you had undertaken as well as testimonials from colleagues attesting to your commitment to professional development and safe nursing practice.

He submitted that while you had not provided a formal PDP document, the evidence within your bundle demonstrated your commitment to professional development. He argued that the training certificate, reflections and testimonials contained in your bundle amounted to a *de facto* PDP, as they outlined the steps you had taken to strengthen your practice. He invited the panel to take a pragmatic approach, recognising that while a single PDP document was not submitted, the information presented today demonstrated meaningful remediation.

Mr Buxton urged the panel to find that you had sufficiently strengthened your practice and should be permitted to return to unrestricted practice. However, he noted that should the panel find that you were still impaired, that it should remove condition 1 to enable you return to practice albeit in a supervised environment.

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 your fitness to practise remains impaired.

The panel noted that the original panel found that you had emerging insight. At this hearing it was noted that you demonstrated an understanding of how your actions put the patient at a risk of harm and how this impacted negatively on the patient, their family, your colleagues and the reputation of the nursing profession.

In its consideration of whether you had taken steps to strengthen your practice, the panel took into account all the evidence before it today, including the documentary evidence contained in your bundle. It also considered Ms Ghotra's submissions as well as the submissions made by Mr Buxton on your behalf.

The panel has concluded that in light of the evidence before it a finding of continuing impairment is necessary on the grounds of public protection. The panel was of the opinion that while you had demonstrated further insight and had completed relevant training, you had not had the opportunity to demonstrate your competence in the pressurised context of a registrant nursing role because you had not practised as a registered nurse in the last eight months.

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 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 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 imposing a varied conditions of practice order on your 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. The panel accepted that you have been unable to comply with some conditions of practice due to its restrictive nature on your employment in a nursing role. It noted that you have been engaging with the NMC and are willing to comply with any workable conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

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 as you have demonstrated insight and taken steps towards remediation.

Accordingly, the panel determined, pursuant to Article 30(2) to vary the conditions of practice order and extend it for a period of nine months, which will come into effect immediately. It decided to impose the following conditions which it considered 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 restrict your practice to a single substantive employer. You must not work as an agency or bank nurse.
- 2) You must ensure that you are not the nurse in charge and that you are supervised by a registered nurse at any time you are working. Your supervision must consist of:
 - Working at all times on the same shift as, but not always directly observed by, a registered nurse.
- 3) You must work with your clinical supervisor to create a personal development plan (PDP). Your PDP must include:
 - a) feedback and development regarding assertiveness
 - b) feedback and development regarding leadership skills particularly in any urgent or emergency situations.

You must:

- Send your case officer a copy of your PDP prior to the review of this order.
 - Send your case officer a report from your clinical supervisor prior to the review of this order. This report must show your progress towards achieving the aims set out in your PDP.
- 4) You must engage with your clinical supervisor on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:
- Meeting with your clinical supervisor at least every three months to discuss your progress towards achieving the aims set out in your PDP.
 - Monthly reflective discussions with your clinical supervisor.
- 5) 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.
- 6) 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.
- 7) 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.

8) 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.

9) 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 nine months.

This conditions of practice order will replace the current conditions of practice order with immediate effect in accordance with Article 30(2).

Before the end of the period of the order, 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 for another order.

Any future panel reviewing this case would be assisted by:

- A written reflective piece demonstrating your professional development since the last hearing particularly on your ability to practise safely and effectively in your capacity as a registered nurse
- Up-to-date relevant training records particularly in relation to managing staff and patients in emergency situations
- Your continued engagement with the NMC

- Your attendance at any future review hearing of this order.

This will be confirmed to you in writing.

That concludes this determination.