

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

**Substantive Order Review Hearing**

**13 January 2020**

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

|                                       |   |
|---------------------------------------|---|
| <b>Name of registrant:</b>            | Daphne Joseph   |
| <b>NMC PIN:</b>                       | 04G10130  |
| <b>Part(s) of the register:</b>       | Registered Nurse – sub part 1<br>Adult Nursing – level 1<br>31 July 2004                                |
| <b>Area of Registered Address:</b>    | Tyne and Wear   |
| <b>Type of Case:</b>                  | Conviction  |
| <b>Panel Members:</b>                 | Jane Davis (Chair, Registrant member)<br>Allwin Mercer (Registrant member)<br>Susan Thomas (Lay member) |
| <b>Legal Assessor:</b>                | Paul Hester   |
| <b>Panel Secretary:</b>               | Amira Ahmed   |
| <b>Nursing and Midwifery Council:</b> | Represented by Laura Paisley, Case Presenter  |
| <b>Mrs Joseph:</b>                    | Present and represented by Anna Chestnutt<br>instructed by the Royal College of Nursing                 |
| <b>Order being reviewed:</b>          | Conditions of Practice Order (9 months)   |
| <b>Outcome:</b>                       | Strike off to come into effect on immediately in<br>accordance with Article 30 (2)                      |

## **Application to Adjourn**

Ms Chestnutt made an application to adjourn under Rule 32 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (the Rules). She submitted that to properly review this substantive order the panel should hear evidence from Mr 1. Ms Chestnutt submitted that whilst the Royal College of Nursing (RCN), who instruct her, had informed the NMC in writing that there were no issues or dispute concerning the further evidence served by the NMC on you that there had been a genuine misunderstanding as to paragraph 6 of Mr 1's statement dated 17 December 2019. Ms Chestnutt submitted that this misunderstanding arose because you did not comprehend that paragraph 6 contains hearsay and requires, on your instructions to Ms Chestnutt, challenge by cross examination. Ms Chesnutt submitted that paragraph 6 of Mr 1's statement, whilst discrete, nevertheless makes the admitted breaches of the current order serious. She explained that in light of the NMC not being able to secure Mr 1's attendance either in person or remotely the panel should adjourn this hearing to a later date. Ms Chestnutt submitted that this would allow time for the NMC to make contact with Mr 1 in regards to giving evidence.

Ms Paisley opposed your application for an adjournment. She submitted that you have made admissions to numerous breaches of your conditions of practice order. She submitted that paragraph 6 of Mr 1's statement addresses a narrow issue which can be considered in the context of other numerous admitted breaches. She also submitted that paragraph 6 of Mr 1's statement is based upon hearsay and that the panel can ascribe what weight it thinks fit to this evidence. Ms Paisley submitted that the current order expires on 22 January 2020 and that this hearing should proceed. She explained that you are present today and are represented and the panel are able to hear you give evidence.

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

The panel had regard to Rule 32 (1), (2) and (4) of the Rules which state:

(1) The Chair of the Practice Committee may, of her own motion, or upon the application of a party, postpone any hearing of which notice has been given under these Rules before the hearing begins.

(2) A Practice Committee considering an allegation may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that

- (a) no injustice is caused to the parties;
- (b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal assessor.

4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
- (c) fairness to the registrant.

The panel noted that this is the eighth review of an order made on 15 February 2013 and that you have therefore been subject to a substantive order for almost seven years.

The panel noted that the RCN sent an email to the NMC on 9 January 2020 which stated:

*"I can confirm that our member does not contest the contents of the witness statements or exhibits, therefore there is no need for the witnesses to give evidence. Additionally our member does admit the breach of her condition".*

Yesterday on day one of this review, Ms Chestnutt requested the attendance of Mr 1 to give evidence concerning paragraph 6 of his statement. The panel granted a short adjournment for the NMC to make enquiries and to secure the attendance of Mr 1 either in person or remotely. The NMC yesterday made numerous attempts by telephone and email to contact Mr 1 but without result. Today the NMC has left two further telephone messages at 08:15am and 08:50am. There has been again no response from Mr 1. The

panel takes the view that the NMC have made copious attempts to contact Mr 1 over the last 24 hours.

The panel noted that the current order expires on 22 January 2020. There would be insufficient time to re-serve notice of a hearing upon you under the Rules as there would only be six working days, including today, before the expiry of the current order. The panel bore in mind that the primary and overarching function of a review is to consider any current impairment in the light of public protection and the wider public interest.

The panel went on to consider paragraph 6 of Mr 1's statement. The panel noted that this passage of his witness statement was hearsay and that it would be open to the panel to ascribe what weight it thought appropriate. The panel also noted that paragraph 6 is discrete and is narrow in compass. The panel noted that you do not have any issue or dispute with the numerous other breaches of the current order. In these circumstances, the panel decided, in fairness to you to disregard paragraph 6 of Mr 1's witness statement when it comes to review the current order. The panel decided that, in proceeding on this basis, there would be no prejudice to the NMC or the public when reviewing the order as you have made admissions to numerous other breaches and that paragraph 6 of Mr 1's witness statement adds little to any potential and overall level of culpability. In coming to this conclusion the panel noted that you are currently subject to condition seven which states that you must immediately inform various named parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures. These parties include, amongst others, any organisation or person employing, contracting with or using you to undertake nursing work; and any agency you are registered with or applied to be registered with.

In light of the above reasons, the panel determined to refuse your application and proceed with this hearing.

## **Decision and reasons on review of the current order:**

The panel decided to impose a strike off. This order will come into effect immediately in accordance with Article 30 (2) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the eighth review of a conditions of practice, originally imposed by a panel of the Conduct and Competence Committee on 15 February 2013 for 12 months. The current order is due to expire on 22 January 2020.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order was as follows:

*That you, a registered nurse:*

- 1. On 31 January 2012, at Newcastle upon Tyne Crown Court, were convicted of “ill-treat / wilfully neglect care of person who lacks / reasonable believe lacks capacity” contrary to Section 44 of the Mental Capacity Act 2005 and were sentenced to 9 months’ imprisonment suspended for 12 months and 60 hours unpaid work and supervision for 12 months with probation officer.*

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

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

*“The panel has had regard to all of the documentation before it, including the written submissions from the RCN dated 19 March 2019. These included a reflective statement, case studies, and an email from her former employer. It has taken account of the submissions made by Ms Thomas on behalf of the NMC.*

*Ms Thomas outlined the background of the case to the panel and submitted that Mrs Joseph has not been able to work as a nurse since the last hearing and has been unable to comply with her conditions of practice and accordingly, is currently impaired.*

*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.*

*Regarding Mrs Joseph's insight, the panel noted Mrs Joseph has demonstrated some insight. She has provided the panel with case studies as was suggested by the previous reviewing panel. The panel was of the view that these case studies in isolation did not provide sufficient insight into her clinical failings. The panel noted that at a previous review hearing, concerns were raised regarding Mrs Joseph oral evidence when questioned about her interpretation of vital signs. While giving full weight to Mrs Joseph's difficult circumstances, the panel considered that it was unfortunate that Mrs Joseph had been unable to attend today despite the indications from the last reviewing panel.*

*In its consideration of whether Mr Joseph has remedied her practice the panel took into account that as Mrs Joseph has not worked as a nurse since April 2016, she has not been able to comply with her conditions of practice. The panel noted that this was a serious case and she has been unable to demonstrate that she has remediated her clinical failings. In the absence of sufficient remediation on Mrs Joseph's part, the panel decided that a finding of current impairment remains necessary on public protection grounds and to uphold the wider public interest.*

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

The seventh reviewing 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 risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.*

*The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.*

*The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest, noting Ms Joseph’s ongoing engagement with these proceedings, her efforts to remediate and she was actively seeking employment as a registered nurse. The panel noted that that Mrs Joseph had expectations that a role for a registered nurse would become available at her current employment, it appears this did not materialise through no fault of her own. This has delayed her progression into a registered nursing post. The panel also noted that Mrs Joseph has recently been through difficult personal circumstances.*

*The panel considered the imposition of a suspension order. For the reasons set out above, on this occasion, the panel considered that suspension was not appropriate and would be disproportionate. Furthermore it considered that Mrs Joseph should have a further opportunity to remediate.*

*Mr Joseph should be aware that when the matter is listed for review, all options as to sanction will be available to the reviewing panel, including strike off.*

*Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a conditions of practice order for a period of 9 months, which will come into effect on the expiry of the current order. It decided*

*to impose the following conditions which it considered are workable, appropriate and proportionate in this case:*

- 1. You must notify the NMC within seven days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
- 2. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:*
  - a. subject to 2b, you work at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is physically present in/or on the same ward, unit, floor or home that you are working in or on;*
  - b. When performing, recording, interpreting and acting upon vital signs, you must be under the direct observation of a registered nurse.*
- 3. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns in the following area of your practice: performing, recording, interpreting and acting upon vital signs and the implications of changes to vital signs.*

*You must provide evidence of a competency-based assessment in this area whilst working under the supervision of another registered nurse.*

- 4. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least monthly to develop and discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

5. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and if appropriate that you are assessed as competent in the area highlighted above in your personal development plan to the NMC at least 14 days before any NMC review hearing or meeting.*
  
6. *You must inform the NMC of any criminal or professional investigation started against you and any criminal or professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*
  
7. *You must immediately inform the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (6) above, to them:*
  - a. *any organisation or person employing, contracting with, or using you to undertake nursing work;*
  - b. *any agency you are registered with or apply to be registered with (at the time of application);*
  - c. *any prospective employer (at the time of application) where you are applying for any nursing appointment; and*
  - d. *any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

*This order will be reviewed before its expiry. A reviewing panel may be assisted by:*

- *Mrs Joseph's attendance at a review hearing;*
- *A reflective piece addressing and demonstrating sufficient insight into Mrs Joseph's clinical failings, and the impact this had on patients, the nursing profession and the wider public interest."*

## **Decision on current fitness to practise**

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

The panel carefully considered your oral evidence which was given under oath. The panel also had regard to all of the documentation before it, including your written reflective pieces, your own personal development plan, several character testimonials and a number relevant training certificates. It has taken account of the submissions made by Ms Paisley on behalf of the NMC and those made by Ms Chestnutt, on your behalf.

Whilst Ms Paisley made no submissions on behalf of the NMC after your oral evidence, she submitted when opening the NMC's case that your current fitness to practise remains impaired. She submitted that you have knowingly breached your conditions of practice order and that this had the potential for you to practice unsafely. Ms Paisley submitted that you have shown insufficient insight into your actions and the potential affect that they may have had. She reminded the panel that you have been under NMC conditions for seven years and still have not fully remediated your practice.

Ms Chestnutt submitted that you accept that your fitness to practise is currently impaired. In terms of sanction, Ms Chestnutt submitted that you are apologetic for your actions and understand the impact they could have had. She submitted that you have had difficulties in your personal life and finances which led to you breaching your conditions of practice order. She submitted that you are currently looking for mentorship and have spoken to a university about enrolling on a return to practice course this year.

Ms Chestnutt submitted that taking no further action and a caution order are both not appropriate in light of you breaching your conditions of practice order. She submitted

that a further conditions of practice order which includes a personal development plan and mentorship would be appropriate. She submitted that if the panel feels it is necessary for a more restrictive sanction to be made then it could impose a suspension order rather than a striking-off order.

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 notwithstanding your admission that your practice remains impaired it remains a matter for the panel to decide upon.

The panel reminded itself of its earlier decision on your application to adjourn and disregarded paragraph 6 of Mr 1's witness statement when considering the question of impairment.

The panel noted that this is the eighth review of a substantive order first made on 15 February 2013. At each of the previous seven reviews panels have made a conditions of practice order. Over the last almost seven years panels have made minor amendments to the various conditions of practice orders.

The panel carefully considered your oral evidence and all the documentation before it and considered whether you have remedied your shortcomings and whether your misconduct is highly unlikely to be repeated in future.

The panel considered whether you have demonstrated sufficient insight into your misconduct. The panel noted that you admitted during your oral evidence that you have breached your conditions of practice order and, in doing so, have acted dishonestly. The panel was concerned by your inability when giving oral evidence to step back from

the situation and consider your actions objectively. In particular, the panel noted that in giving oral evidence you sought to blame the agency for the fact that your conditions of practice order was not known by the Home. Further, the panel was concerned that your motivation in working 42 shifts at the Home was to address your financial difficulties and that you took little account for the safety of the residents and the reputation of the nursing profession. The panel, having carefully considered your oral evidence, could find no insight into you fully accepting your responsibilities towards the Home when working there. The panel noted that you now appreciate that you should have done things differently.

The panel gave careful consideration to your undated written reflective pieces and decided that they demonstrated minimal insight into your actions. Having heard you give lengthy oral evidence the panel was concerned as to the discrepancy between your oral evidence and the quality of your written reflective pieces. The panel was extremely concerned that during your oral evidence you stated that despite you breaching a conditions of practice order you had “confidence within me to perform my duties as a nurse well”.

In light of the above reasons, the panel found that you have superficial insight into the gravity of your original misconduct and the seriousness of the subsequent breaches of your conditions of practice order. These breaches were wide ranging in that you did not inform the Home that you were under a conditions of practice order; you worked unsupervised when you should have been supervised; there was no personal development plan in place; and you were not subject to any competency assessments.

The panel considered the question of remorse. The panel noted that you said you were sorry for your original misconduct and the subsequent breaches of your conditions of practice order. The panel was concerned that this was not genuine remorse as you repeatedly, during your oral evidence, sought to blame the agency for the Home not being told that you were subject to a conditions of practice order.

In its consideration of whether you have remedied your practice the panel took into account the relevant training certificates which included RCN training that you provided

but it noted that they had only recently completed these on 3 and 4 January 2020 and online. The panel took into account your character testimonials but noted that none relate to your practice as a nurse.

The panel noted that in your oral evidence you explained that you had applied to the agency twice with a two year gap between the applications. The panel further noted your oral evidence that in your first application to the agency you disclosed your conditions of practice order but in your second application you did not because you had thought that this would have been retained on your file after your first application. The panel was concerned that after a significant period of two years you did not remind the agency in a fresh application that you were still subject to a conditions of practice order.

In light of your superficial insight and the finding that you have not fully remediated your shortcomings since 2013 the panel decided that you are highly likely to repeat your misconduct

The panel had borne in mind that its primary function was 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 protection and wider public interest grounds is required.

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

### **Determination 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 29 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 risk of repetition identified and seriousness of the case. The

panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of both your original misconduct and the subsequent breaches of your conditions of practice order. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel considered continuing the current conditions of practice order. The panel took into account the fundamental, dishonest and numerous breaches of your current conditions of practice order. It noted that you have been under NMC conditions for almost seven years and have knowingly disregarded them when working at the Home. The panel determined that a conditions of practice order will not, in these circumstances, safeguard the public.

The panel next considered imposing a suspension order. The panel considered the seriousness of your case and whether it requires your temporary removal from the register and whether a period of suspension would be sufficient to protect patients, public confidence in nurses and maintain professional standards.

The panel noted the seriousness of your actions in that you dishonestly worked 42 shifts without disclosing your conditions of practice order to the Home. Accordingly, this was not a single breach of your order but multiple breaches which were sustained over a significant period of time. The panel determined, in considering your oral evidence that there is evidence of an attitudinal problem which is shown in your superficial insight and lack of genuine remorse. The panel noted that it has determined that there is a real risk of you repeating your behaviour again. The panel decided that your conduct fell well below the standards expected of a registered nurse. In particular, the panel noted that you accepted that your actions were dishonest. In light of these factors, the panel decided that a period of suspension would be insufficient to protect patients, public confidence in nurses and in the maintenance of professional standards.

The panel determined that it is necessary to take action to prevent you from practising in the future and concluded that the only sanction that will adequately protect the public

and address the public interest is a striking-off order. The panel found that your actions are fundamentally incompatible with being a registered nurse. The panel having heard your oral evidence decided that you were dishonest in that you engaged in a premeditated and long standing deception upon the Home by not disclosing your conditions of practice order in accordance with condition 7. By working at the Home with no supervision, no mentor or personal development plan there was a real and direct risk to vulnerable residents. This was in the context of your original conviction of your neglect of a patient. Further, the panel noted that your dishonesty was motivated for financial gain so as to address your 'financial difficulties'.

The panel decided in light of your dishonesty and serious misconduct that the only sanction which will be sufficient to protect patients, maintain public confidence in nurses and maintain professional standards is if you are removed from the register. The panel therefore directs the registrar to strike your name off the register.

In accordance with Article 30 (2) of the Nursing and Midwifery Order 2001 this striking-off order will come into effect immediately. The panel decided that the striking-off order should come into immediate effect as there is a clear need to act immediately.

This decision will be confirmed to you writing.

That concludes this determination.