

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

**Substantive Order Review Hearing
2 October 2020**

Nursing and Midwifery Council
Virtual Hearing

Name of registrant: John Laurence Dixon

NMC PIN: 03I0285S

Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing (21 February 2007)

Area of registered address: Ayr

Type of case: Misconduct

Panel members: Avril O’Meara (Chair, lay member)
Rachel Jokhi (Registrant member)
Shane Moody (Registrant member)

Legal Assessor: Angus Macpherson

Panel Secretary: Tara Hoole

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mr Dixon: Not present and not represented in absence

Order being reviewed: Conditions of practice order (15 months)

Fitness to practice: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 12 November 2020 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

As of 31 March 2020 a number of temporary amendments to The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (the Rules) came into force, in response to the current Covid-19 pandemic.

As a result of these amendments the Nursing and Midwifery Council (NMC) is now able to serve notice of hearings by email and has the power to hold hearings and meetings virtually.

The panel was informed at the start of this hearing that Mr Dixon was not in attendance and that the Notice of Hearing had been sent to Mr Dixon's registered email address on 2 September 2020.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time and date of the hearing and, amongst other things, information about Mr Dixon's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence. It also contained a link to the virtual hearing.

Mr Webb, on behalf of the NMC, submitted that it had complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Dixon 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 Mr Dixon

The panel next considered whether it should proceed in the absence of Mr Dixon. The panel had regard to Rule 21 and heard the submissions of Mr Webb who invited the panel to continue in the absence of Mr Dixon.

Mr Webb submitted that there had been no engagement at all by Mr Dixon with the NMC in relation to these proceedings despite numerous attempts to contact him by email and telephone. He highlighted that Mr Dixon had not attended the substantive hearing in July 2019 and that there had been no correspondence from Mr Dixon since January 2019. Mr Webb submitted that, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

Mr Webb reminded the panel that the matters relate to public protection and there is a public interest in reviewing the current order before its expiry.

The panel has decided to proceed in the absence of Mr Dixon. In reaching this decision, the panel has considered the submissions of Mr Webb and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Dixon;
- Mr Dixon has not engaged with the NMC and has not responded to any of the attempts to contact him or correspondence sent to him about this hearing;
- There is no reason to suppose that adjourning would secure his attendance at some future date, particularly given the pattern of a lack of engagement since January 2019;
- There are public protection issues; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Dixon.

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order.

This order will come into effect at the end of 12 November 2020 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 15 months by a Fitness to Practise Committee panel on 12 July 2019.

The current order is due to expire at the end of 12 November 2020.

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

The charges found proved which resulted in the imposition of the substantive order were as follows:

'That you:

1. Whilst working as a registered nurse at Rozelle Holm Farm Care Home:

- a) ...*
- b) On 24 September 2014 did not call the GP in relation to Resident B following concerns raised by family members;*
- c) On 27 December 2015:*
 - i. ...*
 - ii. Dispensed the wrong dose of Warfarin;*
 - iii. ...*
 - iv. ...*
- d) On 18 July 2016 signed the MAR chart to say that vitamin B12 had been given to Resident D when it had not been;*
- e) On 13 January 2017 left medication unattended in Resident E's room;*
- f) ...*
- g) On 18 March 2017:*
 - i. Administered Furosemide and/or Omeprazole and/or Ramipril to Resident F when it had already been given;*
 - ii. ...*
- h) On 28 April 17 administered Bisoprolol instead of Mirtazapine to Resident G.*

2. *Whilst working as a Staff Nurse at Heathfield House, Ayrshire:*

a) ...

b) ...

c) *On the night shift of 10/11 March 2018:*

- i. *Failed to check Resident K's blood sugar at around 7am or checked her blood sugar but failed to record it;*
- ii. *Failed to administer Resident K's prescribed insulin at around 7am;*
- iii. *Recorded that Resident K's insulin had been administered when it had not;*
- iv. *Left medication belonging to Resident K unattended in Resident L's room.'*

The original panel determined the following with regard to impairment:

'The panel finds that limbs a and c of the "Grant" test are engaged in this case. The panel considered that Mr Dixon's actions put residents in his care at risk of unwarranted harm. In particular the panel noted that Resident K was admitted to hospital with ketoacidosis which may have been as a result of Mr Dixon's failure to administer the prescribed insulin. In the panel's opinion, Mr Dixon's actions, in dispensing the wrong medication, leaving medication unattended, and failing to check patient records, did amount to a breach of the fundamental tenets of the profession.

The panel considered that, whilst Mr Dixon's reputation could be seen to have been damaged as a result of his actions, it did not necessarily follow that his actions had brought the profession into disrepute.

Regarding insight, the panel considered that Mr Dixon has made some broad admissions in relation to issues with his medication management in his responses to the regulatory charges in January 2019 and February 2018. In addition, Mr Dixon has taken responsibility for issues when they were raised with him during the local investigations, and has demonstrated some remorse, as is detailed in the documentation provided by his managers – Ms 1 and Ms 2 – and in his responses to

the regulatory concerns. The panel was therefore of the view that Mr Dixon has some insight into the failings identified.

In its consideration of whether Mr Dixon has remedied his practice the panel was of the view that there was nothing before it to demonstrate that Mr Dixon has undergone any updated training or that he has worked in a clinical setting without any issues since these incidents. The panel has no evidence of Mr Dixon completing any relevant training since November 2017.

The panel noted Mr Dixon has alluded to issues regarding his health and personal circumstances at the time of the incidents. The panel has no independent expert evidence to confirm this nor has it any information to confirm whether Mr Dixon's issues are ongoing or have been resolved.

The panel is of the view that there is a risk of repetition based on the lack of any evidence of remediation of the concerns identified in Mr Dixon's practice. The panel therefore decided 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 determined that, in this case, a finding of impairment on public interest grounds was required.

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

The original panel determined the following with regard to sanction:

'The panel considered the aggravating feature of this case to be that Mr Dixon's actions put particularly vulnerable residents at risk of serious harm.

The panel identified several mitigating factors. First, Mr Dixon has shown a willingness to take responsibility and broadly accepted concerns raised about his practice; he has demonstrated remorse as well as a degree of insight both at the time of each incident and in his response to the regulatory concerns. Second, Mr Dixon appears to be a generally competent nurse, several of the witness statements describe him as a kind and good nurse, who would never intentionally put patients at risk of harm. Further he is still working in a care home environment albeit as a senior care assistant. Finally, the panel noted that there may be relevant personal mitigation but it does not have any real information about this.

The panel is aware that it can impose any of the following sanctions; take no further action, make a caution order for a period of one to five years, make a conditions of practice order for no more than three years, make a suspension order for a maximum of one year, or make a striking-off order.

The panel considered the potential sanctions in ascending order of restrictiveness.

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 has already found that Mr Dixon's fitness to practise is impaired on the grounds of public interest as well as on public protection grounds. The panel determined that to take no further action would not protect the public nor would it be either proportionate or in the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 having found Mr Dixon's fitness to practise impaired on public protection grounds a caution order would provide no restriction on his practice. The panel determined 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 Mr Dixon'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, in particular:

Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- 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*
- 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*
- 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.

Further the panel was of the view that it was in the public interest that, with appropriate safeguards, Mr Dixon should be able to practice as a nurse. The panel does not wish to deprive the public of the services of an otherwise good, able and caring nurse.

Balancing all of these factors and after having taken into account the aggravating factors and the mitigating factors identified in this case, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking off order would be disproportionate at this stage and would not be a reasonable response in the circumstances of Mr Dixon's case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order would mark the importance of maintaining public confidence in the profession, and would send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

- 1. Upon becoming employed as a registered nurse, you must undertake training covering both theoretical and practical medicines management and associated record keeping. The practical should include a minimum of six medication rounds under the direct supervision of a registered nurse and you must be signed off as competent prior to administering medication without direct supervision. You must produce evidence of this to the NMC upon successful completion of this training and prior to any review hearing.*
- 2. You must successfully complete one medication round under the direct observation of a registered nurse every month for the duration of this order. You must produce evidence of this, from your supervisor, to the NMC prior to any review hearing.*
- 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 about the following areas of your practice:*
 - medication administration;*
 - record keeping associated with medicines management.*
- 4. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

5. *You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.*
6. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC before any NMC review hearing or meeting.*
7. *You must provide a reflective piece to the NMC prior to any review hearing relating to your progress following your return to nursing practice.*
8. *You must tell the NMC within 14 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
9. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*
10.
 - a. *You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name and contact details of the individual or organisation offering the post, employment or course of study.*
 - b. *You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
11. *You must immediately tell 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 11 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) to provide nursing services.*
- c. Any prospective employer (at the time of application) where you are applying for any nursing appointment.*
- 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 is for a period of 15 months and is to be reviewed before its expiry. The panel considered a period of 15 months would allow Mr Dixon time to gain employment as a registered nurse and would allow him sufficient time to complete the necessary learning and practical concerns identified within the conditions listed above. It would also allow Mr Dixon time to demonstrate his ability to safely administer medication and keep accurate records over a significant period of time.'

Decision and reasons on current impairment

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

The panel has had regard to all of the documentation before it.

It has taken account of the submissions made by Mr Webb on behalf of the NMC.

Mr Webb provided the panel with a background to Mr Dixon's case.

Mr Webb submitted that there had been no engagement from Mr Dixon since the imposition of the conditions of practice order at the substantive hearing in July 2019. In the

absence of any further information, Mr Webb submitted that Mr Dixon's fitness to practice remained impaired.

In regard to the appropriate sanction in this case, assuming the panel found Mr Dixon's fitness to practice impaired, Mr Webb submitted that this was a matter for the panel's professional judgement. He highlighted that Mr Dixon had not engaged with the current conditions of practice order and suggested that the persistent lack of engagement may lead the panel to conclude that a suspension order or a striking-off order was now the more appropriate sanction.

The panel 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 Mr Dixon's fitness to practise remains impaired.

The panel noted that there is no information before it regarding Mr Dixon's compliance with the conditions of practice order imposed at the substantive hearing in July 2019. Further there has been no engagement from Mr Dixon with these NMC proceedings for over 20 months.

Regarding Mr Dixon's insight, the panel noted that the last panel concluded that Mr Dixon had some insight into his failings. This panel has no new information before it to determine whether Mr Dixon's insight has developed in the last 15 months or whether he has taken any steps to remedy his practice.

The last panel determined that Mr Dixon was liable to repeat matters of the kind found proved. This panel has received no information to determine that there is no longer a risk of repetition of these failings. In light of this the panel determined that Mr Dixon remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. Given Mr Dixon's lack of engagement with his regulator (which is required of him) 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 Mr Dixon's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Dixon 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 public protection issues identified. 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 Mr Dixon'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 Mr Dixon'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 maintaining a conditions of practice order on Mr Dixon's registration would still be a sufficient and appropriate response. In that context, the

panel considered the continuation of the current conditions of practice order. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that Mr Dixon has not engaged with the NMC since the imposition of the conditions of practice order on 12 July 2019. The panel considered there is no information before it to conclude that Mr Dixon is willing to comply with any further conditions imposed upon his practice. The panel has no information regarding Mr Dixon's current circumstances or his intentions for his nursing career in the future.

The panel noted that, other than in early responses in 2018 and January 2019, Mr Dixon has not shown remorse for his misconduct, nor has he demonstrated any further insight into his previous failings, nor any remediation of his previous failings. The panel was of the view that the ongoing risk to the public therefore remains.

On this basis, the panel concluded that a conditions of practice order is no longer proportionate nor the appropriate order in this case. The panel concluded that, due to Mr Dixon's lack of engagement, there are no longer workable conditions of practice which would protect the public or satisfy the wider public interest.

The panel next considered whether a suspension order is the appropriate order in this case. The panel considered that Mr Dixon's persistent lack of engagement with his regulator has elevated the seriousness of this case, noting that it is a requirement of any registered professional to engage with their regulator and with any fitness to practice proceedings. The panel has no information as to whether Mr Dixon has remediated the concerns identified in his practice or whether he has any further insight into his misconduct. The panel considered that it remains necessary to continue to restrict Mr Dixon's practice. The panel determined that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest.

Accordingly, the panel determined to impose a suspension order for the period of six months. The panel considered that this would provide Mr Dixon with an opportunity to re-engage with the NMC and demonstrate a willingness to return to his nursing career. It considered this to be the most appropriate and proportionate sanction available at this stage. The panel noted that, should Mr Dixon's lack of engagement with these

proceedings continue, that a future panel may consider a striking-off order to be the most appropriate sanction.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 12 November 2020 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:

- Mr Dixon's engagement with the NMC;
- Mr Dixon's attendance at the review hearing;
- A detailed reflective statement from Mr Dixon considering the impact of his failings upon patients, their families, his colleagues and the nursing profession, and what he would do differently in the future;
- any relevant references or testimonials provided in a working capacity, whether paid or unpaid and at least one from a current employer;
- Evidence of any steps Mr Dixon's has taken to maintain his nursing knowledge and skills.

This will be confirmed to Mr Dixon in writing.

That concludes this determination.