

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

**Substantive Order Review Hearing
26 October 2020**

Virtual Hearing

Name of registrant:	Victoria Yetunde Olorunleye
NMC PIN:	05F02680
Part(s) of the register:	Registered Midwife Midwifery – June 2005
Area of registered address:	London
Type of case:	Lack of Competence
Panel members:	David O'Brien (Chair, Registrant member) Sophie Kane (Registrant member) Geoffrey Baines (Lay member)
Legal Assessor:	Graeme Henderson
Panel Secretary:	Safa Musad
Nursing and Midwifery Council:	Represented by Jessica Bass, Case Presenter
Mrs Olorunleye:	Not present and unrepresented
Order being reviewed:	Conditions of practice order (9 months)
Fitness to practise:	Impaired
Outcome:	Striking-Off order to come into effect immediately in accordance with Article 30 (2)

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 ability to hold hearings and meetings virtually.

The panel was informed at the start of this hearing that Mrs Olorunleye was not in attendance and that the Notice of Hearing had been sent to Mrs Olorunleye's registered email address on 24 September 2020.

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

Ms Bass, 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.

In the light of all of the information available, the panel was satisfied that Mrs Olorunleye 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 Mrs Olorunleye

The panel next considered whether it should proceed in the absence of Mrs Olorunleye. The panel had regard to Rule 21 and heard the submissions of Ms Bass who invited the panel to continue in the absence of Mrs Olorunleye. She submitted that Mrs Olorunleye

had voluntarily absented herself. Ms Bass referred the panel to a telephone communication log of a telephone call between the NMC and Mrs Olorunleye dated 12 October 2020. She noted that Mrs Olorunleye informed the NMC that she would not be attending the hearing and 'has nothing new to add for the panel's consideration.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Olorunleye. In reaching this decision, the panel has considered the submissions of Ms Bass, the telephone communication log between the NMC and Mrs Olorunleye and the advice of the legal assessor. It has had particular regard to 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 Mrs Olorunleye;
- Mrs Olorunleye has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

Decision and reasons on review of the substantive order

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

This order will come into effect immediately in accordance with 30(2) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive suspension order originally imposed for a period of 12 months by a panel of the Conduct and Competence Committee on 2 February 2016.

This was first reviewed on 26 January 2017 and the panel replaced the suspension order with a conditions of practice order for a period of 12 months. This order was reviewed on the 26 January 2018 and the conditions of practice order was imposed for 2 years. This order was last reviewed on 28 January 2020 and the conditions of practice order was varied and continued for a period of 9 months.

The current order is due to expire at the end of 3 December 2020.

The panel commenced 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, whilst employed as a registered midwife by the Princess Alexandra Hospital NHS Trust (the Trust), failed to demonstrate the standard of knowledge, skill and judgement required for practice as a registered midwife in that you:

1. *On 12 December 2012 failed to follow best practice when administering medication to Patient A in that you:*
 - a. *Did not prepare, or witness the drawing up of the drug into the syringe;*
 - b. *Injected a substance unknown to you, into Patient A;*
 - c. *Failed to gain consent from Patient A before administering the injection.*

2. *On 18 January 2013 failed to work within your scope of practice when performing a speculum examination on Patient B in that you :*
 - a. *Failed to check Patient B’s medical notes before completing the examination;*
 - b. *Performed a speculum examination on Patient B who was only 31 weeks pregnant at the time.*

3. *Failed to satisfactorily complete a LSA practice programme between July 2013 and December 2013 as set out in schedule 1.*

Schedule 1:

1. *On 13 November 2013 during an observed medication round you required prompting to check patient identities*
2. *On 13 November 2013 during an observed medication round you needed prompting to use the MAR chart to identify timings and doses of medication*
3. *On 13 November 2013 during an observed medication round you were unable to competently measure a dose of liquid medication*
4. *On 13 November 2013 during an observed medication round you left the drugs trolley unlocked and unattended*
5. *On 13 November 2013 during an observed medication round you took approximately one hour to administer medication to five women*
6. *On 14 November 2013 during an observed medication round you attempted to administer a medication to Patient C at the incorrect time*
7. *Between July 2013 and December 2013 you failed to satisfactorily complete a reflective essay to the required standard.*
8. *Between July 2013 and December 2013 you did not produce an individual learning plan*
9. *Between July 2013 and December 2013 you did not participate in the review existing guidelines against national standards.*
10. *Between July 2013 and December 2013 you did not demonstrate sufficient knowledge of legislation*
11. *.....*
12. *Between July 2013 and December 2013 you did not demonstrate sufficient ability to be able to communicate in a professional manner at all times.'*

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

The panel noted that Mrs Olorunleye has not practised as a midwife for some years now. She has not completed a Return to Practice course. She has provided no evidence to demonstrate that she has complied with condition 2. It further noted that no new information is available to address the concerns raised. The panel has no information as to whether she has made any effort to secure a Return to Practice course or about her future career plans. Further, the panel noted that Mrs Olorunleye has not been able to show that she is willing to engage with the conditions of practice. No evidence has been provided that Mrs Olorunleye has kept up to date with the skills required of a midwife.

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 Mrs Olorunleye's fitness to practise remains impaired.

The panel noted that there was no new information bearing upon Mrs Olorunleye's insight.

In its consideration of whether Mrs Olorunleye has remedied her practice, the panel took into account her limited engagement with the NMC process; the lack of evidence to demonstrate whether Mrs Olorunleye is seeking to remedy the concerns raised; and the absence of information as regards her career intentions not least in relation to enrolment on a return the Return to Practice course.

Given the absence of information and evidence before the panel, it has determined that the 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 required.

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

The third reviewing panel determined the following with regard to sanction:

The panel next considered whether imposing a further conditions of practice order on Mrs Olorunleye's 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 was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest at this stage. In this case conditions could be formulated which would protect patients during the period in which there are in force.

The panel was of the view that to impose a suspension order would not be appropriate in the circumstances of Mrs Olorunleye's case at this time.

The panel expects Mrs Olorunleye to understand that she will need to undertake a Return to Practice programme if she wishes to seek employment as a registered midwife. It does not consider that a specific condition is needed on this matter given the nature of extant of NMC requirements.

The panel also wishes to emphasise that whilst it cannot bind the judgement of a reviewing panel it may be that such a panel would wish to give serious

consideration to the imposition of a striking off order given the circumstances of Mrs Olorunleye's case.

The panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of nine months, which will come into effect on the expiry of the current order, namely at the end of 3 March 2020. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

- 1. You must provide to the reviewing panel a report from your line manager, who must be aware of these conditions, specifically commenting on your communication and professional behaviour, at least 14 days prior to any NMC review hearing.*
- 2. Once you have successfully completed a return to practice course and returned to practice:*
 - a. 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:*
 - 1) Administering of medication*
 - 2) Effective communication with patients*
 - b. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every 2 weeks to discuss the standard of your performance and your progress towards achieving the aims set out in your written personal development plan.*
 - c. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these*

such establishment to which you apply to take such a course (at the time of application).

The period of this order is for nine months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 3 March 2020 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Olorunleye has 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:

- *Confirmation that Mrs Olorunleye has complied with condition 1 whether or not she is enrolled on a Return to Practice course.*
- *Evidence of the steps Mrs Olorunleye is taking and has taken to enrol on a Return to Practice programme, and about her future career intentions*
- *Evidence of learning and development including for example online learning and courses undertaken.*
- *Mrs Olorunleye's attendance at the review hearing.*
- *Testimonials or references bearing on her employment whether paid or unpaid.*

Decision and reasons on current impairment

This panel has considered carefully whether Mrs Olorunleye's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in

light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Ms Bass on behalf of the NMC.

Ms Bass outlined the background of the case and referred the panel to the relevant documents. She indicated that the NMC had no position on sanction. She submitted that there has been no material change in circumstances and that an order remains necessary on the grounds of public protection and also in the public interest, given that Mrs Olorunleye remains impaired.

Ms Bass drew the panel's attention to the previous panel's decisions and noted that Mrs Olorunleye was given over two years to comply with the conditions of practice order which is sufficient time to return to safe practice. She also referred the panel to the previous panel's decision dated 28 January 2020 and noted that a panel may wish to give serious consideration to the imposition of a striking-off order given the circumstances of Mrs Olorunleye's case. Ms Bass also noted that the previous panel gave Mrs Olorunleye some direction as to information which would assist a future panel, but Ms Bass submitted that none of this information has been presented.

Ms Bass referred the panel to the case of *Annon v NMC* 2017 EWHC 1879 (Admin) and noted that a panel ought to give time limits to comply with conditions. She submitted that Mrs Olorunleye was given an appropriate amount of time to achieve this and she has been given clear directions for over two years. Ms Bass submitted that in the absence of such information, the panel may wish to consider imposing a striking-off order.

Further, Ms Bass referred the panel to the case of *Abbas v NMC* 2019 EWHC 971 (Admin). She submitted that the panel must consider whether continuing a conditions of practice or suspension order would serve any useful purpose and whether public confidence would be diminished by continuing an 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 Mrs Olorunleye's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mrs Olorunleye had limited insight. The panel noted that although Mrs Olorunleye has engaged in the past, she has not attended this hearing and provided no evidence or information to assure the panel that she has developed insight. The panel determined that given Mrs Olorunleye's limited engagement and her longstanding non-compliance with the conditions of practice order, her insight is clearly lacking and therefore there remains a high risk of repetition.

In its consideration of whether Mrs Olorunleye has remedied her practice, the panel noted that Mrs Olorunleye has not provided any new information to confirm this. The panel noted that Mrs Olorunleye has not complied with the current conditions of practice order and has provided no significant engagement with the NMC as required to do so. The panel also noted that Mrs Olorunleye has not provided any information regarding her career intentions or evidence that she remedied her practice.

The last reviewing panel determined that Mrs Olorunleye was liable to repeat matters of the kind found proved. Today's panel has heard no new information to indicate that Mrs Olorunleye has remediated her practice or complied with the conditions of practice order or taken any steps to return to safe and effective practice. The panel noted that the initial charges found proved were very serious in nature and involved wide ranging failings of fundamental nursing and midwifery care. In light of this, this panel determined that Mrs Olorunleye is 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 and midwifery professions and upholding proper standards of conduct and performance. The panel is of the view that given the longstanding failures of Mrs Olorunleye to remediate her practice

and her limited engagement, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Mrs Olorunleye's fitness to practise remains currently impaired.

Decision and reasons on sanction

Having found Mrs Olorunleye 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 was not bound by any observations made by the previous reviewing panel regarding the outcome of its sanctions decision, it approached the issues of sanction after undertaking a comprehensive review of the order and current evidence and information available to it as of today's date.

The panel first considered whether to take no action but concluded that this would be inappropriate in light 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 which included wide ranging clinical failings and the public protection and public interest issues identified, an order that does not restrict Mrs Olorunleye'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 Mrs Olorunleye's lack of competence was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mrs Olorunleye's 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 has received no information regarding Mrs Olorunleye's career intentions or any information regarding her compliance with any of the current conditions of practice order. In view of Mrs Olorunleye's limited engagement and her persistent failure to take steps to remediate her lack of competence, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose at this stage.

The panel next considered imposing a suspension order. The panel noted that Mrs Olorunleye has not provided evidence of remediation for her lack of competence and is lacking insight into her failings. The panel also noted that members of the public fully aware of the circumstances of this case would expect to see a level of compliance by a registrant who has had so many opportunities to remediate. It is evident that Mrs Olorunleye has not complied over a significant period of time and a suspension order is insufficient to satisfy the public interest in this case. Furthermore, the panel was of the view that imposing any further period of suspension would not reassure the panel that Mrs Olorunleye would comply and remedy her actions in the future. Therefore a suspension order would no longer serve a useful purpose in this case.

In light of the wide ranging lack of competence evident in this case, as a result of several clinical failings and the persistent non-compliance with the conditions of practice orders imposed by previous panels, the panel determined that it was necessary to take definitive action to prevent Mrs Olorunleye from practising in the future. The panel concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

The panel determined to impose this striking-off order with immediate effect. The panel was aware that it could review the order in terms of Article 30(2). The panel saw no purpose in allowing the conditions of practice order to continue till the expiry date. The panel therefore directs the registrar to strike Mrs Olorunleye's name off the register with immediate effect.

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

This will be confirmed to Mrs Olorunleye in writing.

That concludes this determination.