

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

**Substantive Order Review Hearing  
7 October 2020**

**Virtual Hearing**

<b>Name of registrant:</b>	<b>Barbara Simoncini</b>
<b>NMC PIN:</b>	13I0056C
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 Adult Nursing – September 2013
<b>Area of registered address:</b>	Wales
<b>Type of case:</b>	Lack of competence, Misconduct, Knowledge of English
<b>Panel members:</b>	Mary Hattie (Chair, Registrant member) John McGrath (Registrant member) John Brookes (Lay member)
<b>Legal Assessor:</b>	Richard Ferry-Swainson
<b>Panel Secretary:</b>	Simran Saini
<b>Nursing and Midwifery Council:</b>	Represented by Claire Stevenson of Counsel, Case Presenter
<b>Ms Simoncini:</b>	Not present and not represented in her absence
<b>Order being reviewed:</b>	Conditions of practice order (12 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	Conditions of practice order to lapse upon expiry, namely at the end of 16 November 2020, with no further action to be taken, in accordance with Article 30 (1)

## **Decision on service of Notice of Hearing**

The panel was informed at the start of this hearing that Ms Simoncini was not in attendance and that the Notice of Hearing ('NoH') had been sent to Ms Simoncini and her representative, Ms Ashcroft, at the Royal College of Nursing ('RCN') by secure email on 25 August 2020.

The panel took into account that the NoH provided details of the allegation(s), the time and date of the virtual hearing and, amongst other things, information about Ms Simoncini's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Stevenson, 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 Ms Simoncini has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision on proceeding in the absence of Ms Simoncini**

The panel next considered whether it should proceed in the absence of Ms Simoncini. It had regard to Rule 21 and the submissions made by Ms Stevenson, as well as the written submissions provided by Ms Ashcroft on Ms Simoncini's behalf.

Ms Stevenson referred the panel to a letter from the RCN, dated 6 October 2020, which confirmed '*...Our member will not be attending the hearing, nor will she be represented. No disrespect is intended by her non-attendance. Our member returned to Italy in during February/March 2020 and due to Covid-19, has been unable to return to the UK. Our member has received the notice of hearing and is happy for the hearing to proceed in her*

*absence. She remains to engage with the proceedings. The Registrant's legal representatives will be available by phone should the Panel desire to hear from us. Our contact details are known to the NMC.*' Ms Stevenson submitted that the RCN has not asked for an adjournment and as stated above, have confirmed that Ms Simoncini is happy for the hearing to proceed. Further, she submitted that it is in the public interest for this statutory review to take place before its expiry. She submitted that Ms Simoncini has voluntarily absented herself. In light of this, Ms Stevenson invited the panel to proceed in the absence of Ms Simoncini.

The panel has decided to proceed in the absence of Ms Simoncini. In reaching this decision, the panel considered the submissions made by Ms Stevenson and the written submissions provided by Ms Ashcroft. It also took into account the advice of the legal assessor and had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that Ms Simoncini's representatives at the RCN have informed the NMC that she has received the NoH and confirmed that she is content for the hearing to proceed in her absence. The panel was satisfied that Ms Simoncini had voluntarily absented herself from the hearing and thereby waived her right to be present. She was legally represented and those representing her had provided detailed written submission for the panel to consider.

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

### **Decision on review of the substantive order**

After making a finding of current impairment, the panel decided to take no further action and to let the conditions of practice order lapse upon expiry. This order will lapse at the end of 16 November 2020, in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed by a panel of the Fitness to Practise Committee for a period of 12 months on 19 October 2018. This was first reviewed on 8 October 2019 where the order was varied and continued.

The current order is due to expire at the end of 16 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, a registered nurse / failed to demonstrate the standard of knowledge, skill and judgement required for practice without supervision as a Registered Nurse in that:*

1) *Whilst working at Ty Enfys Care Home:*

a) *You demonstrated a lack of knowledge in basic medications, in that:*

- i) *You did not know how to administer insulin safely;*
- ii) *You did not know what the medication Temazepam was for.*

**[Admitted]**

2) **[No case to answer];**

3) *Whilst working at Heol Don Nursing and Residential Care Centre:*

a) **[Not proved]**

b) *On one or more occasions, when asked questions by one or more of the General Practitioners at Llandaff North Medical Practice:*

- i) *You did not know the answers and/or; **[Found proved]***
- ii) *You did not check the patient(s) record(s) in order to enable you to answer the question. **[Found proved]***

c) **[No case to answer]**

d) *In relation to Resident D:*

- i) *On or around 15 March 2016, whilst Dr 1 was examining Resident D, you did not stay near Dr 1 and/or take a note of Dr 1's observations.*

**[Found proved]**

e) *On 21 February 2016, you:*

- i) *Shouted at a Resident and/or; **[Found proved]***

- ii) **[Not proved]**
  - iii) *Inappropriately used a medication trolley to block access to the doubles door; [Found proved]*
  - f) *On one or more occasions acted in a rude and/or abrupt manner towards residents; [Found proved]*
- 4) *Whilst working at Pen Y Lan House Nursing Home;*
- a) **[Not proved]**
  - b) **[Not proved]**
  - c) *On an unknown date at approximately 7:30 ignored the calls by Resident G for a nurse to assist her and/or Resident G's buzzer; [Found proved]*
  - d) **[Not proved]**
- 5) *Whilst employed at Ty Coch Nursing Home between 3-19 October 2016;*
- a) *On an unknown date administered 7 units of Insulin instead of 10 units to Resident I; [Found proved]*
  - b) *On one or more occasions had to be reminded to administer two tablets of losartan medication to Resident J; [Found proved]*
  - c) **[No case to answer]**
  - d) **[Not proved]**
- 6) *That you do not have the necessary knowledge of English to practise safely and effectively; [Found proved]*

*And in light of the above, your fitness to practise is impaired by reason of your lack of competence in relation to charges 1, 2 and 3 (a, b, c and d) and 5: by your misconduct in relation to charges 3 (e, f) and 4; and your lack of knowledge of English in relation to charge 6.'*

The first reviewing panel determined the following with regard to 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 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 has had regard to all of the documentation before it, including the NMC bundle and documentation from you. It has taken account of the submissions made by Ms Mohamed on behalf of the NMC and those made by your representative, on your behalf.*

...

*The panel took into account that you have been volunteered to work for the charity Oxfam in order to improve your emphatic communication skills. The panel considered the medication administration training certificate dated 13 May 2019 provided by you which adequately addressed the matters in relation this concern. However, it noted that you have not yet had the opportunity to demonstrate that you are capable of safe and effective practice as you are not currently working as a nurse.*

*Regarding your insight, the panel noted your written reflective statement and was satisfied that you have expressed remorse and regret for your shortcomings. It also noted that you have acknowledged the potential impact of your errors and shortcomings on patients, the profession and the public interest.*

*The panel noted your efforts to successfully complete the IELTS test. It also noted that you are currently aiming to change the form of your tuition and are yet to complete an IELTS test to the requisite NMC standard. In light of this the panel was of the view that the public would remain at risk of harm if you were to practise without restriction.*

*The panel also considered that allowing a nurse to practise without the requisite level of English would undermine public confidence in the profession and bring the profession and the regulatory body into disrepute. It therefore concluded that the public interest is also engaged in this case.*

*In all the circumstances, the panel decided that a finding of current impairment is necessary on the public protection and public interest grounds.*

*The panel therefore determined that your fitness to practise remains impaired.'*

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

*'Having found that your fitness to practise is currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel also took into account the NMC's Sanctions Guidance and bore 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 or to impose a caution order, but concluded that both options would be inappropriate in view of the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action or to impose a caution order. Neither option would suitably protect the public.*

*The panel next considered the further extending of the current conditions of practice order. The panel was concerned that, although you have shown insight today and made efforts to remediate the concerns identified, you are yet to successfully complete the IELTS test and gain employment in a clinical setting to demonstrate that you are capable of safe and effective practice. The panel took into account your engagement with the NMC and your stated intention to re-sit the IELTS exam and continue nursing in the UK. The panel noted that you have shown a willingness to comply with a conditions of practice order and recognised the need to achieve the required level of competence.*

*The panel decided to vary the current conditions of practice order in order for the conditions to be appropriate and proportionate in this case, and to provide adequate protection to the public whilst affording you a further opportunity to successfully complete the IELTS test and demonstrate that you are capable of safe and effective practice.*

*The panel decided that it would be disproportionate and punitive to impose a suspension order at this time as it would deprive you of the opportunity to search for employment as a nurse and demonstrate remediation to a future panel.*

*Accordingly, the panel determined, pursuant to Article 30(1), to impose a conditions of practice order for a period of 12 months from the expiry of the current order. The conditions are as follows:*

- 1. You must take an IELTS test or an Occupational English Language test and meet the required standards as set out by the NMC.*
- 2. You must continue to develop your knowledge of medication administration so that your competencies can be formally assessed when you are in practice.*
- 3. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a registered nurse who may be a workplace line manager, mentor or supervisor nominated by your employer. Such supervision to consist a period of direct supervision until you have complied with conditions 1 and 2 and thereafter of indirect supervision.*
- 4. Until you have been assessed by your supervisor as competent to do so, you must not carry out the administration of medication unless under the supervision of a registered nurse who may be a workplace line manager, mentor or supervisor nominated by your employer who must deem you competent.*
- 5. 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:*
  - a. Communication with patients/ residents and colleagues.*
  - b. The administration of medication.*

6. *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.*
7. *You must forward to the NMC a copy of your personal development plan within 28 days of the date on which you take up any appointment.*
8. *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 every 3 months and at least 14 days before any NMC review hearing or meeting.*
9. *You must tell the NMC within 7 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.*
10. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
11. a) *You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*  
  
b) *You must within 7 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*

*12. 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*

*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 a course (at the time of application).*

*The period of this order is for 12 months. The panel determined that this is a sufficient period of time for you to complete the training stipulated, secure employment and demonstrate application of your learning in the clinical environment.*

*The order will be reviewed before its expiry. A future reviewing panel may be assisted by the following:*

- your continued engagement with these proceedings;*
- any up to date testimonials and references from any current employment whether paid or unpaid; and*
- any evidence of further training and of CPD showing how you have kept your nursing skills up to date.'*

## **Decision on current impairment**

The panel has considered carefully whether Ms Simoncini'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 and the documents provided by Ms Simoncini's representatives. It has taken account of the submissions made by Ms Stevenson on behalf of the NMC and the written submissions provided by Ms Ashcroft on Ms Simoncini's behalf.

Ms Stevenson provided the panel with a comprehensive background of this case. She drew the panel's attention to the decisions of the previous panels. Ms Stevenson referred the panel to the extensive documentation and submissions provided by Ms Simoncini's legal representatives. She submitted that Ms Simoncini no longer wishes to work as a nurse in the UK, which is evidenced by way of a signed statement from Ms Simoncini. Ms Stevenson told the panel that Ms Simoncini accepts that her fitness to practise remains impaired as she has not fully remediated her failings, in that she has not undertaken and therefore not passed the International English Language Testing System ('IELTS') test. Ms Stevenson said that Ms Simoncini is now working as a teacher in Italy.

In terms of impairment, Ms Stevenson submitted that, in the absence of any evidence of remediation, Ms Simoncini remains impaired, not least because of her own admission of current impairment but also for the reasons outlined above. She drew the panel's attention to the NMC Guidance on 'allowing orders to expire when a nurse or midwife's registration will lapse' and submitted that Ms Simoncini's NMC PIN is only active by virtue of these proceedings. In terms of sanction, Ms Stevenson did not oppose the RCN's request of allowing the substantive order to lapse upon its expiry but rather stated that it is a matter entirely for the panel.

In written submissions, Ms Ashcroft provided a brief background of this case. She requested that the substantive Order be allowed to lapse and provided comprehensive reasons for this request. Ms Ashcroft said that Ms Simoncini has considered her prospects of working as a nurse in the UK carefully and has made the decision to retire from nursing. Ms Simoncini's wish is for her name to no longer appear on the UK's Nursing Register. Ms Simoncini provided a personal statement in which she states *'Although I love my profession, I decided to end it and undertake another path. Thanks to Covid-19 lockdowns, and the impossibility to come back in the UK I had several months to think to what I really need. I realised that the time for changing as [sic] come.'*

Ms Ashcroft said in her submissions that Ms Simoncini has not worked as a Nurse since her referral to the NMC in October 2016, resulting in her PIN being kept artificially active by virtue of these proceedings.

In terms of impairment, Ms Ashcroft said that Ms Simoncini accepts that her fitness to practise remains impaired as she has been unable to remediate her practice, nor undertake and pass a further IELTS test. In these circumstances, Ms Ashcroft invited the panel to consider finding that Ms Simoncini's fitness to practise remains impaired but that the substantive order should be allowed to lapse.

Ms Ashcroft drew the panel's attention to the principle authority of *Clarke v General Optical Council* [2018] EWCA Civ 1463 and before the High Court [2017] EWHC 521 (Admin) ('Clarke'). Ms Ashcroft said that nothing has occurred since the first review hearing which could be said to demand a higher sanction and certainly nothing has occurred which could be said to be 'fundamentally incompatible with the register.' She submitted that there is no public interest in the continuation of the conditions of practice order, and the fact of her retirement from nursing and her pursuit of a career in teaching is something which must be taken into account when considering risk, in that there will be no risk if the order is allowed to lapse.

Ms Ashcroft said that the panel may be concerned about what would happen if Ms Simoncini's intentions were to change. She submitted that the Registrar would be able to fully protect the public and the public interest in such an eventuality. She submitted that if the panel were to revoke the order and allow Ms Simoncini's registration to lapse, she

would need to reapply for readmission to the register in accordance with Rule 15 of the Rules, under which the Registrar would have to be satisfied that Ms Simoncini is capable of safe and effective practice, is of good health and good character and that she has the necessary knowledge of English.

Ms Ashcroft submitted that the public would be entirely protected by allowing the substantive order to lapse. She submitted that a more restrictive sanction would be disproportionate.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Simoncini's fitness to practise remains impaired.

The panel noted that since the first review of the substantive order, Ms Simoncini has not undertaken and therefore not passed the IELTS test. It noted that Ms Simoncini also accepts that she remains currently impaired and that she does not intend to continue practising as a nurse, which is clearly evidenced by a signed declaration from Ms Simoncini. In this declaration, she also states that she understands that if she were to apply for readmission to the register, she would be required to demonstrate that she has the necessary knowledge of English to communicate clearly and effectively and also demonstrate that she is capable of safe and effective practice. Furthermore, the panel also had sight of a signed statement from Ms Simoncini in which she states that she has had a few months to think about what she really needs and that the time for change has now come. It noted that she has moved to Italy and is now teaching Philosophy and does not wish to work as a nurse again.

The panel was of the view that, although Ms Simoncini has shown some insight into her failings and made some admissions, in the absence of any evidence of remediation, it remained necessary to make a finding of continuing impairment on the grounds of public protection, since the risks identified by the original panel remained.

The panel has also borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

### **Decision on sanction**

Having found Ms Simoncini's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect. The panel has also taken into account the NMC's Guidance on 'allowing orders to expire when a nurse or midwife's registration will lapse' and the case of Clarke, *ibid*.

The panel first considered whether to take no further action, and to let the order lapse upon expiry.

The panel had regard to the detailed written representations from the RCN. It considered Ms Simoncini to have been engaging with the NMC throughout these proceedings.

The panel noted the fact that Ms Simoncini's registration is only active because of the current conditions of practice order imposed on her registration, and that it had received a very clear indication from the RCN and Ms Simoncini that she does not wish to return to the nursing profession at any point in the future.

The panel noted that if it was minded to let the current order lapse and take no further action, the public protection concerns would be met by its findings on current impairment, and that this will be drawn to the attention of any future decision-maker if Ms Simoncini attempts to re-join the NMC register.

The panel also noted that if Ms Simoncini were to apply for readmission to the NMC register, the Registrar would have to be satisfied that Ms Simoncini was capable of safe

and effective practice, before accepting any application for readmission. Ms Simoncini would have to satisfy these requirements, having been out of nursing practice since her referral in October 2016 and having outstanding fitness to practise concerns, which had yet to be remediated. The panel considered that these factors would ensure that the public would be adequately protected if Ms Simoncini were to apply for readmission.

The panel had regard to the wider public interest and considered that this would be satisfied in knowing that a finding of impairment had been made in respect of Ms Simoncini, and that her name would be removed from the NMC register as a result of the panel's decision in letting the conditions of practice order lapse upon expiry, namely, at the end of 16 November 2020.

In light of all the above, the panel determined that allowing the order to lapse with no further action to be taken was the most appropriate and proportionate response in this case.

The panel did consider whether to impose a caution order but determined that this would be inappropriate in the particular circumstances of this case. The panel determined that the need to protect the public and to satisfy the public interest would be adequately served by taking no further action, and by allowing the order to expire so that Ms Simoncini's registration will lapse, having marked Ms Simoncini's fitness to practise as currently impaired.

This decision will be confirmed to Ms Simoncini in writing.

That concludes this determination.