

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

Substantive Order Review Hearing

25 September 2020

Nursing and Midwifery Council, Virtual Hearing

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| Name of registrant: | Sister Paschaline Okolo |
| NMC PIN: | 02H10190 |
| Part(s) of the register: | Registered Nurse – sub part 1 Adult Nursing (15 August 2002) |
| Area of Registered Address: | County Durham |
| Type of Case: | Lack of Competence |
| Panel Members: | Anne Asher (Chair, Registrant member) Amy Lovell (Registrant member) David Boyd (Lay member) |
| Legal Assessor: | Hala Helmi |
| Panel Secretary: | Anjeli Shah |
| Sister Okolo: | Not present and not represented |
| Nursing and Midwifery Council: | Represented by Richard Webb, Case Presenter |
| Order being reviewed: | Suspension Order for 9 months |
| Fitness to Practise: | Impaired |
| Outcome: | Order to lapse upon expiry in accordance with Article 30 (1), namely at the end of 1 November 2020 |

Service of Notice of Hearing

The panel was informed at the start of this hearing that Sister Okolo was not in attendance, and she was not represented in her absence.

The panel was informed that the notice of this hearing was sent to Sister Okolo on 27 August 2020 to her email address on the register. Sister Okolo acknowledged receipt of the notice of hearing by email on 3 September 2020.

The panel accepted the advice of the legal assessor.

The panel noted that under the recent amendments made to the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended) (“the Rules”) during the COVID-19 emergency period, notice of hearing can be sent to an email address held for the registrant on the register, or an email address the registrant has notified the Nursing and Midwifery Council (“NMC”) of for the purposes of communication.

In the light of the information available, the panel was satisfied that the notice period was reasonable in all the circumstances of this case. It was satisfied that notice had been served in compliance and in accordance with Rules 11 and 34 of the Rules.

Proceeding in absence

The panel then considered proceeding in the absence of Sister Okolo. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Mr Webb, on behalf of the NMC. The panel accepted the advice of the legal assessor, who referred to the case of *R v Jones* [2002] UKHL 5.

Mr Webb, on behalf of the NMC, referred the panel to an email from Sister Okolo dated 3 September 2020, in which she stated:

“...I would not want to attend the hearing. I hereby give my consent for it to be carried out in my absence.”

Mr Webb submitted that there were a number of emails from Sister Okolo indicating that she was aware of today's hearing. He submitted that she had made her position clear in terms of what she wanted the outcome of today's hearing to be. Mr Webb submitted that there was a public interest in proceeding with this case. He submitted that there were public protection concerns in this case and that the substantive order is due to expire at the beginning of November 2020. Mr Webb submitted that the panel could proceed without any unfairness to Sister Okolo.

The panel had regard to the information before it, including the email from Sister Okolo, where she indicated that she would not be attending the hearing, and she gave her consent for the hearing to proceed in her absence. Sister Okolo had not requested an adjournment. The panel did not consider that there was any information to suggest that an adjournment would secure Sister Okolo's attendance at a hearing on a future date. The panel considered that Sister Okolo had voluntarily absented herself from today's hearing.

The panel noted that Sister Okolo had made written submissions within her correspondence to the NMC, indicating her position and her preferred outcome for this hearing. The panel considered that it would be able to take Sister Okolo's position into account during this hearing. The panel therefore considered that any prejudice or unfairness arising from Sister Okolo not being present at this hearing would be limited.

The panel had regard to the public interest in the expeditious disposal of this hearing, noting that the substantive order to which Sister Okolo is subject is due to expire at the end of 1 November 2020. In these circumstances, the panel determined to proceed in the absence of Sister Okolo.

Decision and reasons on review of the current order:

The panel decided to allow the suspension order to lapse on expiry. This will come into effect at the end of 1 November 2020 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fourth review of a substantive order. On 27 June 2018 a panel of the Fitness to Practise Committee imposed a conditions of practice order for a period of 18 months. On 5 June 2019 the conditions of practice order was extended for 15 months. At an early review on 2 August 2019 the conditions of practice order was replaced with a suspension order for six months with immediate effect. At the third review on 23 December 2019 the suspension order was extended for nine months. The current order is due to expire at the end of 1 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, whilst employed as a registered staff nurse (Band 5) at Whittington NHS Trust, failed to demonstrate the standards of knowledge, skill and judgment to practise without supervision as a registered nurse in that you:

1. *On 07 December 2015:*
 - 1.1. *took an excessive amount of time to administer medication.*
 - 1.2. *did not check the identity of one or more patients prior to administering medication.*

2. *On 14 December 2015:*
 - 2.1. *required prompting to confirm the identity of one or more patients prior to administering medication.*
 - 2.2. *did not sign the relevant MAR chart(s) following the administration of one or more medications.*

3. *On 25 January 2016:*
 - 3.1. *did not check whether one or more patients required medication as a priority.*
 - 3.2. *did not ensure that one or more patients suffering with Parkinson's disease received medication relating to that condition timeously.*
 - 3.3. *did not identify within a reasonable time that a patient in your care had removed their oxygen mask.*
 - 3.4. *...*
 - 3.5. *did not ensure that a patient's feed had been stopped when their nasogastric tube became detached.*
 - 3.6. *did not check the identity of one or more patients prior to administering medication.*

4. *On 04 March 2016:*
 - 4.1. *...*
 - 4.2. *did not identify and/or take appropriate action within a reasonable time of a patient in your care having removed their oxygen mask.*

5. *On 18 March 2016:*
 - 5.1. *did not check and/or connect emergency equipment at the beginning of your shift.*
 - 5.2. *did not weigh one or more patients who were subject to daily weighing.*

6. *On 22 March 2016 did not check and/or connect emergency equipment at the beginning of your shift.*

7. *On 16 May 2016:*
 - 7.1. *did not check and/or connect emergency equipment at the beginning of your shift.*
 - 7.2. *did not escalate the management of a diabetic patient whom you suspected had recently had a hypoglycaemic episode to a diabetes nurse and/or senior staff member.*
 - 7.3. *...*

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

“The panel took into account the fact that Sister Okolo had made it clear prior to the previous review that she no longer wished to practise as a Registered Nurse. It had sight of a reflection dated 24 May 2019 that had been provided to the last panel. In this reflection, Sister Okolo reflected on the events that had occurred that led to her referral to the NMC and how her failings had meant that she did not comply with the NMC Code. The reflection outlined that Sister Okolo had attempted online learning by way of CPD but that the after-effect of the incidents meant that she did not have the “confidence and courage to enable me to practice again or to continue in the profession.” The panel also took into account an email from Sister Okolo dated 25 July 2019 to the NMC Case Coordinator in which she reiterated her feelings in relation to no longer wanting to practise as a Registered Nurse.

The panel received no further correspondence from Sister Okolo at this hearing to indicate that she had changed her stance on this matter.

The panel noted that Sister Okolo had failed to remediate her failings in any meaningful way following the restriction on her nursing practice. In light of this the panel determined that Sister Okolo 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 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 interest grounds is required. This is because given the nature and seriousness of the findings found proved, public confidence in the profession would be undermined if a finding of impairment were not made.

For these reasons, the panel finds that Sister Okolo's fitness to practise remains impaired."

The third reviewing panel went on to determine the following with regard to sanction:

"The panel considered the imposition of a further period of suspension. It noted that Sister Okolo had no plans to return to the nursing profession. It also took into account that, at this time, the option to remove Sister Okolo permanently from the NMC register was not available. The panel therefore took the view that the most appropriate sanction that would protect the public and would also address the public interest in the case was that of a suspension order. The panel had regard to the fact that Sister Okolo may change her mind in relation to her nursing career and took the view that extending the suspension order for a period of nine months would give her time to further reflect on her actions and make a final decision in relation to her nursing career. The panel took into account that the next reviewing panel will have the option to permanently remove Sister Okolo from the NMC register by way of a striking off order, if it believed it to be appropriate at that time."

Decision on current fitness to practise

This panel has considered carefully whether Sister Okolo'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it, including the NMC bundle, correspondence with Sister Okolo and a statement written by Sister Okolo dated 24 May 2019 (also submitted for a previous review). It took account of the submissions made by Mr Webb, on behalf of the NMC.

Mr Webb, on behalf of the NMC, provided a background to this matter. He referred the panel to an email from Sister Okolo dated 10 January 2020, which was sent following the decision of the previous reviewing panel on 23 December 2019. Sister Okolo stated:

"...I still do not intend to go back again into nursing profession as I expressed previously, I had wished that this case be ended with this last review."

Mr Webb informed the panel that this email was in addition to information Sister Okolo provided to the NMC in May 2019, where she indicated that she did not wish to return to the nursing profession. He referred the panel to an email from Sister Okolo dated 3 September 2020, in which she confirmed the same position, namely:

"...I still do not intend to go back to nursing profession again. It is therefore my wish that this case be brought to an end and I would sincerely prefer if the panel would allow the Order to lapse, so I am off the register as I am certainly not going back into the profession again."

Mr Webb submitted that Sister Okolo's position has remained consistent. He submitted that there was nothing to undermine the findings of previous panels that Sister Okolo's

fitness to practise remained impaired. Mr Webb submitted that the panel should conclude that Sister Okolo's unrestricted practice would present a risk of harm to patients. He invited the panel to make a finding of current impairment on the grounds of public protection.

In terms of sanction, Mr Webb submitted that the panel had two options it could consider, either allowing the order to lapse or ending the case by way of a striking-off order, an option now available to this panel. In terms of allowing the order to lapse, Mr Webb informed the panel that Sister Okolo's registration fee expired in August 2018. He submitted that taking this option was likely to be suitable where a nurse has stated that they will not be returning to nursing. Mr Webb submitted that Sister Okolo had made her intentions known for some time, and it has remained the case that she did not wish to return to nursing.

Mr Webb submitted that this case involved lack of competence, as opposed to misconduct, and therefore it may be that the public interest was less engaged in terms of sanction, as it would be with a misconduct case, in which a striking-off order may be necessary to meet any public interest concerns. He submitted that this case primarily involved public protection concerns. Mr Webb submitted that if the panel allowed the order to lapse, the public would be protected by the panel making a finding of impairment. He submitted that this finding, as well as the history of the case, would be drawn to the attention of the Registrar if Sister Okolo ever attempted to return to nursing. Mr Webb also invited the panel to take into account Sister Okolo's comments as to how these proceedings have impacted her, in terms of considering how to bring this case to an end.

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 Sister Okolo's fitness to practise remains impaired.

The panel had regard to the information before it. It noted the correspondence from Sister Okolo in which she consistently indicated that she did not wish to return to the nursing profession. Sister Okolo had also sent a reflective statement dated 24 May 2019, which she had submitted to be considered at a previous review hearing. The panel considered that this reflective statement did demonstrate reflection and insight on Sister Okolo's part, as well as steps she had undertaken in terms of online learning to try and remediate her practice.

Whilst this was the case, the panel noted that this statement dated back to May 2019. Since this time, there was no up to date information before the panel, to indicate any further reflection on Sister Okolo's part or any recent steps to develop her knowledge and skills in order to improve her nursing practice. The panel acknowledged that Sister Okolo had expressed the impact of these proceedings on her, and her consistent intention not to return to the nursing profession. Therefore, as a result of this decision, it appeared that she had been unable to remediate these failings.

As Sister Okolo had not been able to remediate the concerns in this case, the panel considered that there remains a real risk to patients if she were permitted to practise without restriction, in light of her lack of competence to practise safely as a nurse. Having regard to the original charges in this case, the panel noted that they involved fundamental areas of nursing. The panel considered that it remained likely that Sister Okolo would place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 noted that the concerns in this case involved Sister Okolo's lack of competence to practise in fundamental areas of nursing. The panel considered that members of the public would expect nurses to be able to provide such fundamental aspects of care to patients. The panel therefore determined that it was also necessary to make a finding of impairment

on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

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

Determination on sanction

Having found Sister Okolo'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 also took into account the NMC's Sanctions Guidance ("SG") 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 and to allow the current suspension order to lapse on expiry. In doing so, the panel had regard to the NMC's guidance entitled 'Allowing orders to expire when a nurse or midwife's registration will lapse' (9 April 2018) ("the Guidance"). The Guidance states that:

In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse or midwife's practice.

Taking this option is likely to be appropriate if:

- *The nurse or midwife's registration is only active because of the substantive order being in place;*
- *The nurse or midwife does not want to continue practising; and*
- *The public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.*

The panel noted that Sister Okolo's registration fee expired on 31 August 2018. As a result, her registration was only being held effective by virtue of these proceedings and the substantive order currently in place. The panel considered that if it were to allow the order to lapse, Sister Okolo would come off the NMC's register, thereby preventing her

from practising as a registered nurse. Patients and members of the public would be protected from Sister Okolo not being able to practise as a nurse.

The panel noted that Sister Okolo had indicated on a number of occasions to the NMC, including in information before previous reviewing panels that she did not wish to return to the nursing profession. The panel noted that Sister Okolo had put information before the panel to suggest that she had made attempts to update her clinical knowledge and skills, however her confidence had been affected by these proceedings, which had had a great impact on her. It was with this in mind that she made the decision not to return to practising as a nurse in the future. The panel considered that in her correspondence with the NMC, Sister Okolo had been consistent and clear in her intentions not to return to the profession.

The panel had regard to the Guidance, which states that:

The nurse or midwife will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse or midwife is in contact with us, so it will be important for panels to consider if the nurse or midwife is fully engaging with the process before deciding to take this option.

The panel noted that whilst Sister Okolo had stated on a number of occasions that she did not intend to return to nursing, she had not provided information about her plans for the future. In an email to the NMC dated 16 September 2020, she stated:

“...I am sorry I have not got any plan to present. As I explained in my earlier writing already with you, due to the devastating effect of this incident on me, I have not been able to cope or to make plans. I really have nothing more to say. Many thanks for your support.”

Whilst Sister Okolo had not given a clear explanation of her plans for the future away from nursing, the panel acknowledged the explanation provided, and the fact that as a result of the impact of these proceedings, she had been unable to make any plans for the future. The panel was satisfied that having clearly and consistently set out her wish

not to return to nursing on a number occasions, those could be considered as settled intentions.

The panel noted that if Sister Okolo were to change her mind in the future, and apply for readmission on to the register, a Registrar would have to be satisfied that she was capable of safe and effective practice, and that she met the requirements of good health and character. The Registrar would have this panel's decision on impairment available, which would have to be considered against the relevant criteria in making a decision as to a readmission application. The panel considered that this would provide an additional safeguard to maintain public protection.

The panel was therefore satisfied that allowing the current suspension order to lapse on expiry would protect the public, as it would remove Sister Okolo from the register, preventing her from practising as a nurse. If Sister Okolo were to apply for readmission on to the register in the future, which although unlikely given her clearly expressed and consistent intentions with regard to future nursing practice, the Registrar would be able to take the panel's finding on current impairment into account in making any decision as to readmission.

The panel considered whether it would be in the wider public interest to allow the current suspension order to lapse on expiry, particularly in light of the fact that it did not have any information as to Sister Okolo's plans for the future away from nursing. However, the panel balanced this with the fact that Sister Okolo had articulated on a number of occasions that these proceedings had severely impacted her, as a result of which she had lost her confidence and taken the decision not to return to nursing. Sister Okolo was also clear that she had been unable to make any plans for the future as a result of these incidents. The panel considered that Sister Okolo had made her intentions known for some time, and she had been consistent on each occasion of her correspondence with the NMC. It also considered that she had taken steps to reflect upon her failings, and to try and improve her skills and knowledge, albeit she had been unable to fully remediate the concerns. The panel also noted that this case did involve a lack of competence, as opposed to misconduct. It therefore considered that the public interest did not necessarily require a more restrictive sanction to be imposed. In the circumstances, the panel considered that confidence would not be undermined in the

nursing profession and in the NMC as a regulator if it were to allow the current suspension order to lapse upon expiry.

The panel went on to consider whether it would be more appropriate to impose a more restrictive sanction in this case.

With regard to imposing a caution order, the panel noted that this would not restrict Sister Okolo's practice, and therefore it would enable her to practise as a registered nurse. Given the outstanding public protection concerns, the panel determined that imposing a caution order would be inappropriate, in terms of protecting the public, and that this would also not satisfy the wider public interest.

The panel considered whether to impose a conditions of practice order. It noted Sister Okolo's indication of no intention to practise in the future, and therefore it considered that conditions would serve no useful purpose, in facilitating Sister Okolo's return to safe and effective practice. The panel also noted that conditions of practice had previously been imposed but Sister Okolo had been unable to comply with them at that stage, and it had no information to suggest that Sister Okolo would now be in a position to comply with conditions.

In considering a suspension order, the panel noted that Sister Okolo had previously been subject to this type of sanction, during which time she had remained engaged with the NMC, but her intentions with regard to future nursing practice had been the same over this period. The panel considered that another period of suspension would serve no useful purpose, as it was highly unlikely to facilitate further remediation on Sister Okolo's part and her return to safe and effective nursing practice.

The panel then considered a striking-off order, noting that it now had the option to impose this type of sanction in Sister Okolo's case, as she had been subject to substantive orders for a period of over two years. The panel noted that the concerns in this case involved Sister Okolo's lack of competence, as opposed to misconduct, and no attitudinal issues have been identified. The panel determined that imposing a striking-off order would be disproportionate and punitive.

The panel was satisfied that allowing the current suspension order to lapse on expiry was the most appropriate and proportionate outcome in this case.

In accordance with Article 30(1) of the Order, the current suspension order will lapse upon expiry, namely at the end of 1 November 2020.

This decision will be confirmed to Sister Okolo in writing.

That concludes this determination.