

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

**Substantive Order Review Hearing  
Tuesday 29 September 2020**

Nursing and Midwifery Council  
Virtual Hearing

**Name of registrant:** Ruth Whitley

**NMC PIN:** 80F0376E

**Part(s) of the register:** Registered Nurse – Sub Part 2  
RN2: Adult – August 1982  
  
Registered Nurse – Sub Part 1  
RN1: Adult – August 2005

**Area of registered address:** Devon

**Type of case:** Misconduct

**Panel members:** Tim Skelton (Chair, lay member)  
Sue O'Sullivan (Registrant member)  
Suzanna Jacoby (Lay member)

**Legal Assessor:** Ben Stephenson

**Panel Secretary:** Ruth Bass

**Nursing and Midwifery Council:** Represented by Zainab Mohamad, Case  
Presenter

**Mrs Ruth Whitley:** Not present and not represented

**Order being reviewed:** Conditions of practice order (18 months)

**Fitness to practise:** Impaired

**Outcome:** **Impaired - Order to lapse upon expiry, namely  
at the end of 3 November 2020**

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

The panel was informed at the start of this hearing that Mrs Whitley was not in attendance and that the Notice of Hearing had been sent to her registered email address on 28 August 2020. A copy of the Notice of Hearing was also sent Mrs Whitley's representative at the RCN on 28 August 2020.

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

Ms Mohamad, on behalf of the Nursing and Midwifery Council (NMC), submitted that the Notice of Hearing had been served appropriately in accordance 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 light of all of the information available, the panel was satisfied that Ms Whitley 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 Whitley**

The panel next considered whether it should proceed in the absence of Mrs Whitley. The panel had regard to Rule 21 and heard the submissions of Ms Mohamad who invited the panel to continue in the absence of Mrs Whitley. She referred the panel to a letter received from the RCN dated 25 September 2020 which states:

*'Our member will not be attending the hearing nor will she be represented. No disrespect is intended by her non-attendance. Our member has received the notice of hearing and is happy for the hearing to proceed in her absence. She is keen to engage with the proceedings.'*

Ms Mohamad told the panel that Mrs Whitley was happy for the hearing to proceed in her absence. She stated that the letter provided by the RCN provided detailed submissions on Mrs Whitley's behalf and that no request for an adjournment had been made. Ms Mohamad reminded the panel that the current order was due to expire on 3 November 2020 and submitted that there was a strong public interest in proceeding today.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Whitley. In reaching this decision, the panel has considered the submissions of Ms Mohamad, the written representations from the RCN on behalf of Mrs Whitley, and the advice of the legal assessor. It has had particular regard to the 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 Whitley
- Mrs Whitley's representative 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 light of the approaching expiration of the current order.

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

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

The panel decided to allow the current order to lapse upon expiry at the end of 3 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 18 months by a Fitness to Practise Committee panel on 4 April 2019. The current order is due to expire at the end of 3 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 employed as unit manager at Bell Vue [“the Home”], did not ensure residents were provided an adequate standard of care in that you:*

1. ...
2. *Did not record in Resident A’s admissions assessment that he had a history of:*
  - 2.1. *Sexual behaviour,*
  - 2.2. ...
3. ...
4. *Did not escalate concerns you had about Resident A’s admission;*
5. *Did not respond adequately to concerns that the Home smelt of urine;*
6. *Did not ensure residents had access to sufficient activities;*
7. *Did not ensure that residents wore appropriate footwear around the Home;*
8. ...
9. *Did not adequately document supervision meetings held with staff;*
10. *On 18 July 2016, when administering medication to an unknown patient:*

- 10.1. ...
- 10.2. *Placed the medication in the resident's mouth with your fingers,*
- 10.3. ...

11....

12....

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

The original panel determined the following with regard to impairment:

*The panel bore in mind that it had to look to the future and consider whether you were liable to act in such a way again. The decision regarding the risk of repetition in this case would be informed by consideration of the level of insight and remorse demonstrated by you and by whether your misconduct has been or is capable of being remedied. The panel referred to the case of Cohen v GMC [2008] EWHC 581 (Admin) and concluded that the misconduct was remediable in this case. The panel had sight of the training certificates you provided dated September 2018 and February 2019. It concluded that although you have made some efforts to remediate, you have not worked in a nursing role for a period of over 2 years nor have you been working in a healthcare environment. It therefore cannot be satisfied that you are capable of safe practice and as a result the risk of repetition remains.*

*Regarding your insight, the panel had sight of your reflective statement dated 3 April 2019. It considered that you sought to blame others to a large degree for your errors which demonstrates a lack of acceptance of responsibility for your failings. The panel was of the view that you have not properly acknowledged the risk of harm to residents under your care or the effect your misconduct could have had on the families of residents and the nursing profession in general. The panel has therefore concluded that your insight is insufficient at this time.*

*The panel determined that your fitness to practise is impaired 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel determined that public confidence in the profession would be undermined if a finding of impairment were not made in circumstances where a registered nurse, particularly in a managerial role, did not provide the ongoing standard of care expected to vulnerable residents.*

*The panel also concluded that a finding of impairment was necessary on the grounds of public interest.*

*Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.*

The original panel determined the following with regard to sanction:

*The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. Any conditions imposed must be proportionate, measurable and workable.*

*The SG makes clear that a key consideration in assessing whether a conditions of practice order may be appropriate is whether conditions will be sufficient to protect patients and the public interest. It also states that a conditions of practice order may be appropriate when the following apply:*

- there is no evidence of harmful deep-seated personality or attitudinal problems;*
- there is no evidence of general incompetence;*

- *there are identifiable areas of the nurse's practice in need of assessment and/or retraining;*
- *patients will not be put in danger either directly or indirectly as a result of conditional registration;*
- *it is possible to formulate conditions and make provision as to how they will be monitored.*

*The panel considered that this applied in your case. There is clear evidence before the panel which indicates that you would respond positively to conditions of practice as you have expressed a willingness to practise as a nurse in the future. It bore in mind that you were working in difficult circumstances and that your misconduct is capable of remediation. It was of the view that a conditions of practice order would afford you adequate time to obtain employment, the opportunity to develop further insight and demonstrate that you have addressed the concerns found in your practice to a future reviewing panel.*

*Having reached a provisional view that a conditions of practice order is appropriate, sufficient and proportionate, the panel then considered whether a suspension order would be disproportionate. The panel noted that you made a number of early admissions and your engagement throughout the hearing. It further noted that this is your first NMC referral in your career of over 30 years. It concluded that a suspension order is disproportionate and that it is in the public interest that, with appropriate conditions, you should be able to return to practise as a registered nurse.*

*The panel was satisfied that a conditions of practice order would send to the public and the profession a clear message about the standards of practice required of a registered nurse and would maintain public confidence in the profession and the regulatory process.*

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

1. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:*
  - a) *Working at all times on the same shift as, but not necessarily under the direct observation of another registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.*
  
2. *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) *Recognition and escalation of risk*
  - b) *Accurate record keeping*
  - c) *Effective and appropriate decision making*
  
3. *You must meet with your line manager, mentor or supervisor 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.*
  
4. *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.*
  
5. *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC before any NMC review hearing or meeting.*
  
6. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be*

*involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*

7. *You must disclose a report not more than 28 days old 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 any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer and at any educational establishment.*
8. *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.*
9. *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.*
10.
  - a) *You must within 7 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/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 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 (9) 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; and*
- d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

*The period of this order is for 18 months in order to give you the opportunity to remediate your misconduct and develop the appropriate level of remorse and insight into your actions and their impact on patients and the wider public.*

### **Decision and reasons on current impairment**

The panel has considered carefully whether Mrs Whitley'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 letter from the RCN dated 25 September 2020. It has taken account of the submissions made by Ms Mohamad on behalf of the NMC. She submitted that Mrs Whitley has not been able to remediate the issues relating to her practice. Ms Mohamad pointed out that Mrs Whitley had been unable to secure employment as a nurse and had provided details of her new career as set out in the letter from the RCN dated 25 September 2020.

Ms Mohamad submitted that Mrs Whitley has not addressed the risks identified by the substantive panel and there remains a risk of repetition of the misconduct. She submitted

that Mrs Whitley's fitness to practise remains impaired on both public protection and public interest grounds. With regard to sanction, Ms Mohamad stated that this was a matter for the panel. She referred the panel to the RCN's request for the current order to be revoked and submitted that this option would not account for the public interest. She submitted that were the panel minded to find Mrs Whitley's fitness to practise currently impaired, the panel could consider taking no further action and allowing the order to lapse. She submitted that Mrs Whitley has been clear in her intention that she no longer plans to return to a career in nursing, is pursuing a career as a Housekeeper, and started an apprenticeship in this field in August 2019. Ms Mohamad reminded the panel that there must be exceptional reasons for an order to be revoked.

The panel also had regard to the written representations from the RCN dated 25 September 2020.

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 Whitley's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Whitley had insufficient insight, and that, although the misconduct was capable of remediation, it had not been remedied at that stage.

At this hearing the panel noted that Mrs Whitley has not been able to secure employment as a nurse, and as such, has not been able to comply with the current conditions of practice order. It also had regard to the letter from the RCN dated 25 September 2020 and noted Mrs Whitley's personal acknowledgement that '*...her fitness to practice remains impaired, as she has not had the opportunity to fully remediate her practice, due to her being unable to secure a role within healthcare...*'. In light of the fact that Mrs Whitley has not been able to obtain employment as a nurse and remediate her practice, the panel determined that she is liable to repeat matters of the kind found proved. It 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 also required.

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

### **Decision and reasons on sanction**

Having found Mrs Whitley'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 had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator. The panel therefore considered the written request from the RCN to revoke the current order, and the invitation from Ms Mohamad to allow the order to lapse. The panel was of the view that it had not received any evidence that required the immediate revocation of the current order. It therefore considered the NMC's guidance '*Allowing orders to expire when a nurse or midwife's registration will lapse*' which states:

*'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 doesn't 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.*

*If nurses and midwives don't pay their fee and complete revalidation, their registration would usually lapse. However, if a nurse or midwife is on a conditions of practice order, or a suspension order, their registration cannot lapse because of the existence of the order. If the panel decide to allow the order to expire, the nurse or midwife who has not paid their fee or completed revalidation would no longer be registered with us, and would not be able to practise.'*

The panel determined that this case met the requirements necessary for allowing an order to expire when a nurse or midwife's registration will lapse. In coming to this conclusion, the panel had regard to the following:

- The written submissions from the RCN confirming that Mrs Whitley's registration would have lapsed but for these ongoing proceedings;
- Mrs Whitley's undated personal statement advising that she no longer wishes to continue practising as a nurse and setting out her new career path as a Housekeeper;
- The panel's finding of current impairment.

The panel was satisfied that its finding of current impairment would protect the public from risk of harm in the future, as the registrar would have to take into account its finding on impairment prior to any decision being made to readmit Mrs Whitley to the register. The panel was of the view that its finding of current impairment also satisfied the public interest as Mrs Whitley would not be able to practise as a nurse until issues surrounding her impairment had been addressed fully, thereby maintaining the integrity of the register.

The panel gave much consideration to Mrs Whitley's intended career change into the Housekeeping field, noting that she has persevered in this field despite facing some setbacks and the fact that she is currently undertaking an apprenticeship and is due to complete this in November 2020. The panel was of the view that Mrs Whitley had set out a convincing rationale that demonstrated a clear intention not to return to nursing.

The panel did consider the sanctions available to it. It was of the view that, due to Mrs Whitley's clear intention not to return to nursing, an order that maintained her registration artificially was not in the public interest. The only option available to the panel therefore that would satisfy the issue of public protection and public interest, was a strike-off order. The panel was of the view that this outcome would be disproportionate to the seriousness of the misconduct.

Taking account of all of the above, the panel determined that the most appropriate and proportionate outcome, which achieved the panel's overarching objective of public protection and served the wider public interest, was to take no further action and allow the conditions of practice order to expire at the end of 3 November 2020. This will bring these fitness to practise proceedings to an end and, as a result, Mrs Whitley's NMC registration will lapse and she will no longer be able to practise as a nurse.

This will be confirmed to Mrs Whitley in writing.

That concludes this determination.