

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

**Substantive Order Review Hearing
Wednesday 7 April 2021**

Virtual Hearing

Name of registrant:	John Laurence Dixon
NMC PIN:	03I0285S
Part(s) of the register:	Registered Nurse – sub part 1 Adult Nursing (21 February 2007)
Area of registered address:	Ayrshire
Type of case:	Misconduct
Panel members:	Jane Kivlin (Chair, Registrant member) Sarah Furniss (Registrant member) Alexandra Ingram (Lay member)
Legal Assessor:	Douglas Hogg QC
Panel Secretary:	Dilay Bekteshi
Nursing and Midwifery Council:	Represented by David Claydon, Case Presenter
Mr Dixon:	Not present and unrepresented
Order being reviewed:	Suspension order (6 months)
Fitness to practise:	Impaired
Outcome:	Striking off order to come into effect at the end of 12 May 2021 in accordance with Article 30 (1)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Dixon was not in attendance and that the Notice of Hearing had been sent to Mr Dixon's registered email address on 8 March 2021.

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

Mr Claydon, 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 Mr Dixon has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Dixon

The panel next considered whether it should proceed in the absence of Mr Dixon. The panel had regard to Rule 21 and heard the submissions of Mr Claydon who invited the panel to continue in the absence of Mr Dixon. He submitted that Mr Dixon had voluntarily absented himself.

Mr Claydon drew the attention of the panel to a record of a telephone conversation between Mr Dixon and the NMC dated 6 April 2021, in which Mr Dixon stated that he would not be attending the hearing on 7 April 2021.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Dixon. In reaching this decision, the panel has considered the submissions of Mr Claydon, 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 Mr Dixon;
- Mr Dixon has informed the NMC that he has received the Notice of Hearing and confirmed he is not attending;
- There is no reason to suppose that adjourning would secure his 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, appropriate and proportionate to proceed in the absence of Mr Dixon.

Decision and reasons on review of the substantive order

The panel decided to impose a striking off order.

This order will come into effect at the end of 12 May 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive order originally imposed as a conditions of practice order for a period of 15 months by a Fitness to Practise Committee panel on 12 July 2021. This was reviewed on 2 October 2020 and a suspension order was imposed for a period of 6 months.

The current order is due to expire at the end of 12 May 2021.

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

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

'That you:

1. *Whilst working as a registered nurse at Rozelle Holm Farm Care Home:*
 - a) ...
 - b) *On 24 September 2014 did not call the GP in relation to Resident B following concerns raised by family members;*
 - c) *On 27 December 2015:*
 - i. ...
 - ii. *Dispensed the wrong dose of Warfarin;*
 - iii. ...
 - iv. ...
 - d) *On 18 July 2016 signed the MAR chart to say that vitamin B12 had been given to Resident D when it had not been;*
 - e) *On 13 January 2017 left medication unattended in Resident E's room;*
 - f) ...
 - g) *On 18 March 2017:*
 - i. *Administered Furosemide and/or Omeprazole and/or Ramipril to Resident F when it had already been given;*
 - ii. ...
 - h) *On 28 April 17 administered Bisoprolol instead of Mirtazapine to Resident G.*
2. *Whilst working as a Staff Nurse at Heathfield House, Ayrshire:*
 - a) ...
 - b) ...
 - c) *On the night shift of 10/11 March 2018:*
 - i. *Failed to check Resident K's blood sugar at around 7am or checked her blood sugar but failed to record it;*
 - ii. *Failed to administer Resident K's prescribed insulin at around 7am;*
 - iii. *Recorded that Resident K's insulin had been administered when it had not;*
 - iv. *Left medication belonging to Resident K unattended in Resident L's room.'*

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

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

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

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

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

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

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. Given Mr Dixon's lack of engagement with his regulator (which is required of him) the panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

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

'The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case and the public protection issues identified, an order that does not restrict Mr Dixon's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Mr Dixon's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether maintaining a conditions of practice order on Mr Dixon's registration would still be a sufficient and appropriate response. In that context, the panel considered the continuation of the current conditions of practice order. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

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

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

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

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

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

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 12 November 2020 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

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

Decision and reasons on current impairment

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

The panel has had regard to all of the documentation before it. It has taken account of the submissions made by Mr Claydon on behalf of the NMC.

Mr Claydon briefly outlined the background of the case. He invited the panel to find that Mr Dixon's fitness to practise remains impaired on both public protection and public interest grounds. He submitted that Mr Dixon had not provided the NMC with any evidence of the concerns being remediated, or any attempts he was making to do so. Mr Claydon submitted that Mr Dixon had not engaged with any of the suggestions from the previous review panel and, in the absence of anything to suggest that the risks identified had reduced, Mr Dixon's practice remains impaired.

With regards to sanction, Mr Claydon directed the panel's attention to the relevant sections of the NMC's Sanctions Guidance, including the guidance relating to allowing orders to lapse upon expiry which states:

"A clear explanation about the nurse, midwife or nursing associate's fitness to practise at the point of their departure from the register will make sure that the Registrar is aware of how the nurse, midwife or nursing associate's practice caused a risk to patients. In such circumstances the Registrar can ask the nurse, midwife or nursing associate to show what they have done to improve their practice and reduce any outstanding risk."

Mr Claydon submitted that the only information before it, is a telephone note which was only produced after several failed attempts to contact Mr Dixon.

Mr Claydon submitted that given the clinical errors were over a long period of time and were fairly basic in their nature, they could have been remediated. Mr Claydon submitted that the fact Mr Dixon's failings had not been remediated raises concerns considering Mr Dixon was working in a healthcare setting (as a healthcare assistant). He submitted that Mr Dixon's inability to remediate these basic errors should be considered by the panel.

Mr Claydon submitted that an order remains necessary and that the panel may consider whether a striking-off order may be appropriate given the lack of progress since Mr Dixon's last review or allow the order to lapse upon expiry.

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 Mr Dixon's fitness to practise remains impaired.

The panel noted that Mr Dixon put patients at risk of harm and failed to act in accordance with conduct fundamental to nursing care. The panel further noted that there was no

evidence to suggest that any action has been taken by Mr Dixon to keep himself up to date with training or comply with any of the suggestions made by the previous panel. It also noted the previous panel's view that there was no insight shown by Mr Dixon into the concerns found proved, and there is nothing to suggest today that any new insight has been shown.

The panel had no new information before it to demonstrate that Mr Dixon no longer poses a risk to patient safety, and as such, it considered there to be a risk of repetition of the misconduct and a risk of harm to patients. Therefore, the panel 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, performance and engagement with the NMC. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mr Dixon'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 considered allowing the order to lapse on expiry, in other words to take no action. However, the panel considered that clear and unequivocal evidence as regards insight, remediation and future plans is required to justify such an outcome. Other than a bare statement in a telephone conversation to the effect that Mr Dixon does not wish to practise again as a nurse, no such evidence is available. In the same telephone conversation Mr Dixon referred to some health issues but again no evidence had been put before the panel relating to these. The panel considered that allowing the order to lapse

would not adequately protect the public if Mr Dixon decided to return to practice. Furthermore, the panel considered that it was important to maintain the standard of requiring good evidence to be brought before a panel to show an intention not to practice, and to simply allow the order to lapse would not be in the NMC's best interests nor the wider public interest. As will appear below the panel has decided, for the reasons set out below, to make a striking-off order.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Dixon's practice would not be appropriate in the circumstances. The 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 order on Mr Dixon's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Dixon's misconduct. The panel was also mindful that Mr Dixon had not engaged with the NMC and had no further information before it which would indicate that he could or would comply with a further conditions of practice order. A consideration which prompted the first reviewing panel to replace the then existing conditions of practice order with a suspension order.

The panel next considered imposing a further suspension order. The panel noted that Mr Dixon has not demonstrated any insight into his previous failings and had not taken the opportunity to re-engage with the NMC over the last 6 months. Nor had he complied with the suggestions made by the previous panel, of actions that might assist this reviewing panel. The panel was of the view that this demonstrated disrespect to the panel and the NMC as his regulator. The panel was of the view that considerable evidence would be required to show that Mr Dixon no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Mr

Dixon from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely at the end of 12 May 2021 in accordance with Article 30(1).

This decision will be confirmed to Mr Dixon in writing.

That concludes this determination.