

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

**Substantive Order Review Hearing  
Tuesday 5 April 2022**

Virtual Hearing

**Name of registrant:** Hyacinth Elieze Johnson

**NMC PIN:** 76D0686E

**Part(s) of the register:** Sub Part 2  
RN2: Adult nurse (15 November 1978)  
Sub Part 1  
RN1: Adult nurse (1 June 1995)  
SPDN: Specialist practitioner: District nursing (14 October 1995)  
RHV: Health visitor/V100: Community practitioner nurse prescriber (20 September 2003)

**Area of Registered Address:** USA

**Type of case:** Misconduct

**Panel members:** Yvonne O'Connor (Chair, Registrant member)  
Laura Scott (Registrant member)  
Tricia Breslin (Lay member)

**Legal Assessor:** Attracta Wilson

**Panel Secretary:** Teige Gardner

**Nursing and Midwifery Council:** Represented by Kevin Brown, Case Presenter

**Ms Johnson:** Not present and unrepresented at this hearing

**Order being reviewed:** Conditions of practice order (2 years)

**Fitness to practise:** Impaired

**Outcome:** **Order allowed to lapse at the end of 14 May 2022, in accordance with article 30(1) of the Nursing Midwifery Order (2001).**

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

The panel was informed at the start of this hearing that Ms Johnson was not in attendance and that the Notice of Hearing had been sent to Ms Johnson's representative's registered email address on 4 March 2022.

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

Mr Brown, 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 Johnson 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 Ms Johnson**

The panel next considered whether it should proceed in the absence of Ms Johnson. The panel had regard to Rule 21 and heard the submissions of Mr Brown who invited the panel to continue in the absence of Ms Johnson. He submitted that Ms Johnson had voluntarily absented herself. He referred the panel to the email from Ms Johnson's representative, dated 18 March 2022, which stated:

*"I confirm that the registrant will not be attending the hearing on 5 April, nor will she be represented. I will be providing written submissions to you in due course, for the reviewing panel to consider on behalf of the registrant."*

Further, in her representative's written submissions, dated 23 March 2022, it 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.”*

Mr Brown invited the panel to proceed in the absence of Ms Johnson.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Johnson. In reaching this decision, the panel has considered the submissions of Mr Brown, the email from Ms Johnson's representative, made on her behalf, and the advice of the legal assessor. It has had particular regard to any 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 Ms Johnson;
- Ms Johnson's representative has informed the NMC that they have received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

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

The panel decided to allow the current order to lapse.

This order will lapse at the end of 14 May 2022 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 2 years by a Fitness to Practise Committee panel on 16 September 2019. This was subsequently reviewed by the High Court on 15 May 2020, who made the decision to vary the conditions of practice order.

The current order is due to expire at the end of 14 May 2022.

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, on or about 8 June 2017:*

- 1. Did not maintain adequate records for Child A in that you:*
  - a. did not accurately record the date of your visit to Child A;*
  - b. did not identify that your entry dated 11 June 2017 in respect of Child A was made retrospectively;*
  - c. upon identifying bruising to Child A, did not complete a body map;*
  - d. ...*
  
- 2. Did not adequately safeguard Child A upon identifying bruising in that you did not:*
  - a. ...*
  - b. notify the clinical lead;*
  - c. notify the safeguarding named nurse;*
  - d. notify the safeguarding advisor;*
  - e. take adequate steps to notify a social worker.*

*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 finds that your actions put Child A at an unwarranted risk of harm in the way that you failed to adequately maintain records in relation to him or adequately safeguard him at the time in question contrary to fundamental tenets of the nursing profession.*

*Regarding insight, the panel acknowledged that you had accepted some of the charges but, ultimately, considered that you had failed to adequately reflect on your actions. Further, you have not completed any training in relation to your failings and have taken no steps to address them, having not worked as a Registered Nurse for some time due to a combination of retiring and personal circumstances meaning that you have not been able to take such steps. Whilst you have stated the effect of the case on yourself, you have not shown any insight of the impact upon the patients and families, the profession as a whole or the public.*

*The panel is of the view that there is a risk of repetition based on the fact that the failings occurred just two months after you had successfully completed a record keeping improvement plan. Nevertheless you continued to make errors in this regard. The panel therefore decided that a finding of impairment is necessary 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 well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It was of the view that the nursing reputation would be significantly damaged if your fitness to practise was not found to be impaired after the findings that it had made.*

*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:

*“In reaching its decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the Sanctions Guidance (“SG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.*

*The panel considered the following to be aggravating factors in the case:*

- You had successfully undertaken a record keeping improvement plan just months before the misconduct took place;*
- You have shown some insight into your actions in your reflective piece but have failed to comment on the impact your actions might have had on the child and family in your care or the nursing profession in general;*
- The matters involved a vulnerable child at a real risk of harm;*
- You were going on leave immediately after the events took place and should have ensured that the matter had been recorded and handed over appropriately before taking this leave.*

*The panel considered the following to be mitigating factors in the case:*

- You made admissions to some of the charges and submitted a reflective piece;*
- You have engaged in the NMC process despite very difficult personal circumstances;*
- There was much upheaval at the Trust at the time of the incident which contributed to difficult working circumstances;*
- You have provided two very positive references from Registered Nurses who have worked closely alongside you, including one health visitor who you spoke to regarding the incident upon your return to the office;*
- There is no evidence that this is anything but a one off incident involving a single visit to a family.*

*The panel particularly considered it was imperative for you to have left a clear and full record for your colleagues before you were away for a full working week and you should have taken thorough steps to ensure they were aware of the need of safeguarding steps to be taken. The panel had particular regard also to the fact that there was no evidence to suggest that the misconduct found proved was anything but a single incident involving a single family.*

*In its deliberation on which sanction was appropriate, the panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.*

*Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.*

*The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular when conditions of practice would be appropriate, as follows:*

- no evidence of harmful deep-seated personality or attitudinal problems*
- identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining*
- no evidence of general incompetence*
- potential and willingness to respond positively to retraining*

- *patients will not be put in danger either directly or indirectly as a result of the conditions*
- *the conditions will protect patients during the period they are in force*
- *conditions can be created that can be monitored and assessed.*

*The panel determined that it would be possible to formulate appropriate and practical conditions, as set out in the SG, which would address the failings highlighted in this case. The panel accepted that you would be willing to comply with conditions of practice having taken account of those suggested by Ms Forbes in her submissions.*

*The panel took account of your reflective piece which had briefly addressed the clinical shortfalls that had occurred with the exception of adequate risk assessment. You have also provided two references which attest to your abilities as a Registered Nurse.*

*Balancing all of these factors and after having taken into account both the aggravating and mitigating features of this case, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.*

*The panel was of the view that to impose a suspension order or a striking off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case. The panel noted that you have engaged with the NMC process despite personal circumstances that have meant that you have been out of the country for some time. The panel was of the view that to impose a suspension order would be unduly punitive having been able to identify conditions of practice that both protect the public and address the public interest in the case.*

*Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.”*

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

The panel has considered carefully whether Ms Johnson'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 written submissions from Ms Johnson's representative. It has taken account of the submissions made by Mr Brown on behalf of the NMC. He provided a background of the case. He submitted that there has been no change in the risk posed by Ms Johnson to the public, as she has not worked as a registered nurse for several years. He submitted that, as Ms Johnson has not provided evidence that she has undertaken further training in the areas of concern identified, she remains impaired on the ground of public protection and also in the wider public interest. He referred the panel to Ms Johnson's representatives' written submissions, which states that they accept that there remains impairment, states that Ms Johnson has retired from nursing and requests the panel consider allowing the order to lapse.

Mr Brown submitted that if the panel allow the order to lapse, as suggested by Ms Johnson's representative, without a finding of current impairment would not be in the public interest nor would it protect the public. However, he submitted that it was for the panel to decide which sanction is the most appropriate and proportionate.

Mr Brown submitted that, in the circumstances whereby Ms Johnson has not been working as a registered nurse since 2018, she has not had an opportunity to comply with the conditions imposed on her practice and therefore cannot be said to be in breach of them.

The panel also had regard to Ms Johnson's representatives' written submission.

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 in the NMC as its regulator, and to uphold proper standards of conduct and performance.

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

The panel has found it significant that Ms Johnson admitted current impairment.

The panel was of the view that there has been no new evidence provided that would suggest Ms Johnson is no longer impaired. It noted that Ms Johnson has retired from nursing, has not worked as a registered nurse since 2018, and has therefore not engaged with the conditions imposed on her practice. In particular, the panel noted that Ms Johnson has not undertaken further training in safeguarding or record keeping, nor provided any evidence that she has taken any steps to strengthen her practice. The panel considered this in the context that Ms Johnson has indicated that she no longer wants to practice as a registered nurse. Notwithstanding her stated intention, the panel considered the risk of repetition remains as Ms Johnson may change her mind and seek to return to practice in the future.

The panel also noted that Ms Johnson has not provided any evidence of insight into her misconduct. Therefore, the panel was of the view that a finding of impairment was necessary on the grounds of public protection.

Furthermore, the panel was of the view that a well-informed member of the public would be concerned to see that Ms Johnson has not been found impaired, as she has taken no action to strengthen her practice in relation to the concerns found proved. 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 Ms Johnson's fitness to practise remains impaired.

## Decision and reasons on sanction

Having found Ms Johnson'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 first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Johnson'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 Ms Johnson'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 took into consideration the request from Ms Johnson to allow the order to lapse. The panel took into account the NMC guidance on allowing an order to expire when a nurse's registration will lapse. Ms Johnson has not practiced as a registered nurse since the imposition of the conditions of practice order in 2019. It noted that she has drawn her pension, no longer resides in the UK and has health issues. The panel noted that Ms Johnson's registration is only active because this substantive order is in place. The panel was of the view that the public would be protected as the panel have made a clear finding of impairment, as seen above, therefore it would be made clear to the registrar that Ms Johnson's fitness to practice is impaired if she were to attempt to re-join the register at a future date.

The panel considered whether the wider public interest would be satisfied if the panel allowed the conditions of practice order to lapse on expiry.

The panel considered whether the public interest would be satisfied if the conditions of practice order were allowed to lapse on expiry. The panel determined that the public interest concerns have been addressed in that the allegations against Ms Johnson have been fully investigated and appropriate sanctions have been imposed. The public interest continues to be protected in that a finding of impairment will remain against Ms Johnson's record and will be addressed should she seek re-entry onto the Register. Further a well-informed member of the public would be satisfied that in circumstances where Ms Johnson no longer wants to return to work as a registered nurse, has retired, has engaged with the NMC throughout and is suffering ill health, allowing the order to lapse is an appropriate and proportionate response in the public interest.

The panel was of the view that a conditions of practice order is no longer required, as Ms Johnson has expressed that she no longer wants to return to work as a registered nurse. The panel also noted that Ms Johnson has not breached the conditions currently imposed on her practice. Taking all of this into consideration, the panel was of the view that a suspension or striking-off order would be wholly inappropriate and disproportionate, considering the circumstances of this case.

The panel therefore decided to allow this order to lapse in accordance with article 30(1).

This decision will be confirmed to Ms Johnson in writing.

That concludes this determination.