

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

**Substantive Order Review Hearing
Friday 22 April 2022**

Virtual Hearing

Name of registrant: Genevieve Faun Lutton

NMC PIN: 06E0211E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – September
2006

Area of registered address: Cornwall

Type of case: Misconduct

Panel members: Suzy Ashworth (Chair, Lay member)
Allwin Mercer (Registrant member)
David Newsham (Lay member)

Legal Assessor: Ian Ashford-Thom

Hearings Coordinator: Chandika Cheekhoory-Hughes-Jones

Nursing and Midwifery Council: Represented by Claire Stevenson, Case
Presenter

Mrs Lutton: Not present and not represented

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order varied and
extended (18 months) to come into effect on
26 April 2022 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 Mrs Lutton was not in attendance and that the Notice of Hearing had been sent to Mrs Lutton's registered address by secure email on 24 March 2022.

Ms Stevenson, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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 Mrs Lutton's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Lutton 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 Lutton

The panel next considered whether it should proceed in the absence of Mrs Lutton. The panel had regard to Rule 21 and heard the submissions of Ms Stevenson who invited the panel to continue in the absence of Mrs Lutton. She submitted that Mrs Lutton had voluntarily absented herself.

Ms Stevenson referred the panel to the on table documents which included a telephone conversation log dated 19 April 2022 between the NMC case officer and Mrs Lutton in which it is stated that Mrs Lutton "*confirmed that she won't be attending - she said "there's no point" because she has retired from nursing.*"

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Lutton. In reaching this decision, the panel has considered the submissions of Ms Stevenson, the on table documents, 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 Lutton;
- Mrs Lutton has informed the NMC case officer that she will not be attending today's hearing as she has retired from nursing;
- An adjournment had already been granted by the previous panel;
- There is no reason to suppose that adjourning would secure her attendance at some future date, and
- The current order is due to expire soon on 26 April 2022, 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 and in the public interest to proceed in the absence of Mrs Lutton.

Decision and reasons on review of the substantive order

The panel decided to vary and extend the current conditions of practice order.

This order will come into effect at the end of 26 April 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 nine months by a Fitness to Practise Committee panel on 25 June 2021. A review was scheduled for 21 March 2022 and the hearing was adjourned upon the application of Mrs Lutton.

The current order is due to expire at the end of 26 April 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:

‘The panel was of the view that Mrs Lutton’s actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Lutton’s actions amounted to a breach of the Code. Specifically:

10 *Keep clear and accurate records relevant to your practice
This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.
To achieve this, you must:*

10.1 *complete records at the time or as soon as possible after an event,
recording if the notes are written some time after the event*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered that Mrs Lutton’s actions relate to three separate residents and that it has found it proved that she backdated several records without noting that they were made retrospectively. The panel determined that record keeping is a fundamental aspect of nursing and that Mrs Lutton’s failings did amount to a breach of the Code.

The panel found that Mrs Lutton’s actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.’

The original panel determined the following with regard to impairment:

‘The panel finds that patients were put at risk as a result of Mrs Lutton’s misconduct. Mrs Lutton’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that whilst Mrs Lutton’s email to the NMC dated 16 June 2020 and a CMF dated 13 October 2021. On the CMF completed by Mrs Lutton she stated the following:

'I have reflected long and hard on my time at caritate and am very aware that my own actions although I tried were not of the standard that I had previously and afterwards have always worked at, up to date and correct care planning and risk assessments are the basis of the care that we give and when they are of poor quality then it's fair to say that the care given is probably going to be of the same quality and may impact negatively on the service user...'

'I'm now employed very happily at [a home] and have been very open about this referral and any mistakes made whilst at caritate. I've been unable to find a course solely on care planning but have undertaken a great deal of self directed study on this matter. I love my job and I've always taken pride in my work, at caritate it became harder and harder to work to an acceptable standard due to an ongoing lack of support...'

The panel concluded that Mrs Lutton had demonstrated remorse and insight to a limited extent and very limited information on remediation. There is a risk of repetition in this case, as Ms Lutton has been unable to demonstrate how she would approach this differently when updating records and she has not provided sufficient insight to suggest she understands how her actions have affected the reputation of the nursing profession. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel further consider Mr Lutton's email correspondence with the NMC dated 16 June 2021 which states the following:

'I have decided not to attend, I have no wish to return to a career that is overseen by people who assist in bullying and harassing nurses for whistle blowing, I did nothing wrong, I went above and beyond to try and keep the paper work in order at caritate nursing home by going in on my time off. I have stopped the payment for my

registration from going out and now consider it a lapsed registration which I have no intention of reactivating.'

The panel noted that Mrs Lutton does not wish to return to nursing practice; however, she may change her mind in the future. The panel was satisfied that the misconduct in this case is capable of remediation. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Lutton has remedied her practice. The panel took into account the CMF and Mrs Lutton's email correspondence with the NMC. However, it had no evidence of remediation such as undertaking training courses in relation to record keeping or a reflective piece.

The panel concluded that there is a risk of repetition based on insufficient evidence to show that Mrs Lutton has full insight and that she has remediated the areas of concern. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 concluded that public confidence would be undermined if a finding of impairment were not made in this case, given the panel's findings relating to public protection, and for that reason alone finds Mrs Lutton's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Lutton's fitness to practise is currently impaired. '

The original panel determined the following with regard to sanction:

'The panel took into account the following aggravating features:

- *Mrs Lutton has not demonstrated sufficient insight and remediation into her misconduct.*
- *The misconduct involved three vulnerable patients' care plans and risk assessments and could have resulted in harm.*
- *There was a number of retrospective entries made in the course of a day.*

The panel also took into account the following mitigating features:

- *Mrs Lutton has engaged with the NMC investigation and provided responses to the NMC dated 20 February 2019 and 16 June 2021.*
- *No actual harm was caused to patients.*
- *No previous regulatory matters.*
- *No concerns about Mrs Lutton's clinical practice.*
- *Entries were updated at the request of Mrs Lutton's manager.*

The panel first considered whether to take no action but concluded that this would be inappropriate as the misconduct was serious and had the potential to cause harm to patients.

The panel then considered the imposition of a caution order but again determined that, due to the limited insight and lack of evidence of remediation, an order that does not restrict Mrs Lutton'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 a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor protect the public to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Lutton'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 took into account the SG, in particular:

- 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; and*
- Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel considered that these concerns can be easily remediated.

The panel had regard to the fact that these incidents happened over two years ago and that, other than these incidents, Mrs Lutton has had an unblemished career as a nurse. The panel was of the view that it was in the public interest that, with appropriate safeguards, Mrs Lutton should be able to practise as a nurse.

Balancing all of these factors, 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 punitive and would not be an appropriate sanction in the circumstances of Mrs Lutton's 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.

Mrs Lutton has stated she does not wish to be a nurse and has chosen not to attend this hearing and therefore not confirmed her willingness to comply with a conditions of practice order. However, the panel is satisfied that if Mrs Lutton wishes to return to nursing, a conditions of practice order can address the misconduct found proved. This gives Mrs Lutton an opportunity to reconsider her position in pursuing her profession as a registered nurse if she wishes to do so. Therefore, the panel determined that the following conditions are workable, appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

- 1. Before any review of these conditions, you must attend a training course, which may be in person or online, that focuses on record keeping. You must provide evidence of successful completion of this course at least seven days prior to any review.*
- 2. Prior to any review, you must provide your NMC case officer with a reflective piece that includes reference to record keeping, and the impact of your conduct on patients, the public and the nursing profession.*
- 3. Prior to any review, if you have been employed, you must provide a report from your line manager, mentor or supervisor which includes reference to your record keeping at least seven days prior to any review.*

4. *You must keep the NMC informed 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.*
5. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*
6.
 - a. *You must keep the NMC informed when accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing, and provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*
 - b. *You must keep the NMC informed when entering into any arrangements required by these conditions of practice and provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
7. *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 (6) 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 or midwifery services*
 - c) *Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment*

- d) *Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take a course (at the time of application).*

The period of this order is for nine months to allow Mrs Lutton time to consider and engage with the conditions. Mrs Lutton can make a request for an early review if she wishes to do so.

Before the order expires, a panel will hold a review hearing to see how well Mrs Lutton has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Mrs Lutton's attendance in person, virtually or by telephone.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Lutton'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 original 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 on table documents. It has taken account of the submissions made by Ms Stevenson on behalf of the NMC.

Ms Stevenson informed the panel that there have been some developments since the last substantive hearing. She informed the panel that Mrs Lutton has since then completed her

training in record keeping. She explained that at the previous hearing, there was correspondence from Mrs Lutton stating that she was going to return to nursing practice. She explained that Mrs Lutton had informed the NMC by email dated 22 March 2022 that *“after much consideration I have decided to take my name off the register, I am no longer working as a nurse and have retired from nursing completely and with immediate effect.”*

Ms Stevenson submitted that, although Mrs Lutton’s current decision to retire represents a change of circumstances, this does not undermine the necessity for an order. She observed that there was no evidence that Mrs Lutton had complied with all of her existing conditions of practice and that it was unclear as to when Mrs Lutton stopped working.

With reference to the on table documents, Ms Stevenson observed that Mrs Lutton had recently reiterated her intention to retire. However, she submitted that the current order remains necessary on the grounds of public protection and otherwise in the public interest because in the event that Mrs Lutton chooses to resume her nursing practice, the order would be necessary to protect the public and maintain public confidence in the profession.

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 Lutton’s fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Lutton had limited insight and had not indicated how she would strengthen her practice towards upholding the standards of the nursing profession.

The panel noted that Mrs Lutton had met some conditions of the existing conditions of practice order, namely that she had completed her record keeping course and had provided details to the NMC of a new nursing appointment. However, the panel observed that Mrs Lutton could have demonstrated more commitment towards strengthening her practice and that there was no indication that Mrs Lutton had developed further insight. It

also noted that some of the conditions had not been met; there was no reflective account available to the panel and there was no report or reference before this panel from Mrs Lutton's (now previous) employers. The panel also noted that Mrs Lutton had changed her mind with regards to whether she would be returning to practice, and that it had seen no evidence that Mrs Lutton has in fact retired from practice.

Based on all the information before it, the panel finds that in the light of insufficient strengthening of Mrs Lutton's practice, a risk of repetition and therefore potential harm to patients remains. The panel therefore determined that there is no information before it which undermines the necessity for an order or otherwise mitigates the risks previously identified. In light of this, this panel determined that Mrs Lutton is liable to repeat matters of the kind found proved in the event that she resumes her practice. 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. The panel determined that, in light of Mrs Lutton's lack of progress towards upholding the standards of the nursing profession, a finding of continuing impairment on public interest grounds is also required.

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

The panel first considered whether to allow the order to lapse. However, it noted that Mrs Lutton had not met all the conditions of practice previously imposed. It also noted that although Mrs Lutton had expressed an intention to retire, there was a change of mind before, and in the event that Mrs Lutton decides to resume her practice, an order remains necessary to protect the public and is also in the public interest.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, the public protection issues identified, and the insufficient information demonstrating how Mrs Lutton's practice has strengthened, an order that does not restrict Mrs Lutton's practice would not be appropriate in these 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 imposing a varied conditions of practice order on Mrs Lutton's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel noted that the misconduct is remediable and it determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Mrs Lutton had complied with some of the current conditions of practice.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest. The panel noted that there was no material change in the circumstances which increased or reduced the risks identified by the previous panel. It also noted that Mrs Lutton is an experienced nurse and that the conditions of practice would provide the appropriate framework for her to engage with if she decides to resume her practice.

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 Mrs Lutton's case. The panel observed that there is no information before it indicating that the risks have increased and therefore imposing a suspension order would be disproportionately punitive.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 26 April. It decided to vary the existing conditions to the following, which it considered are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.'

1. Prior to any review, you must provide your NMC case officer with a reflective piece that includes reference to record keeping, and the impact of your conduct on patients, the public and the nursing profession.
2. Prior to any review, if you have been employed, you must provide a report from your line manager, mentor or supervisor which includes reference to your record keeping at least seven days prior to any review.
3. You must keep the NMC informed 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.
4. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.
5.
 - a. You must keep the NMC informed when accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing, and provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.
 - b. You must keep the NMC informed when entering into any arrangements required by these conditions of practice and provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
6. 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 (6) 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 or midwifery services;

- c) Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment; and
- d) Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take a course (at the time of application).

The period of this order is for 18 months in order to allow Mrs Lutton to make a firm decision regarding any return to practice and to provide her with sufficient time to meet the conditions of the practice order, should she decide to return.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 April 2022 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Mrs Lutton has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development, including a reflective piece;
- Testimonials from a line manager or supervisor that detail Mrs Lutton's current work, paid or unpaid; and
- Mrs Lutton's attendance in person, virtually or by telephone.

This will be confirmed to Mrs Lutton in writing.

That concludes this determination.