

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

**Substantive Order Review Hearing  
Thursday 28 April 2022**

Nursing and Midwifery Council  
Virtual Hearing

**Name of registrant:** Donald Morgan Thompson

**NMC PIN:** 80F1859E

**Part(s) of the register:** Registered Nurse  
Learning Disabilities - (July 1983)  
Mental Health - (July 2005)

**Area of registered address:** Merseyside

**Type of case:** Misconduct

**Panel members:** Adrian Ward (Chair, lay member)  
Susan Jones (Registrant member)  
Nisa Khan (Lay member)

**Legal Assessor:** Iain Ross

**Hearings Co-ordinator:** Dylan Easton

**Nursing and Midwifery Council:** Represented by Shekyena Marcelle-Brown, Case  
Presenter

**Mr Thompson:** Not present and not represented

**Order being reviewed:** Conditions of practice order (12 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (12 months) to come into  
effect at the end of 5 June 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 Mr Thompson was not in attendance and that the Notice of Hearing had been sent to Mr Thompson's registered email address on 23 March 2022.

Ms Marcelle-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.

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

In the light of all of the information available, the panel was satisfied that Mr Thompson 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 Thompson**

The panel next considered whether it should proceed in the absence of Mr Thompson. The panel had regard to Rule 21 and heard the submissions of Ms Marcelle-Brown who invited the panel to continue in the absence of Mr Thompson. She submitted that Mr Thompson had voluntarily absented himself.

Ms Marcelle-Brown submitted that, despite Mr Thompson having engaged with the NMC at previous hearings, there had been no engagement at all by Mr Thompson with the NMC in relation to these proceedings today. As a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mr Thompson. In reaching this decision, the panel has considered the submissions of Ms Marcelle-Brown and the advice of the legal assessor. It 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 Mr Thompson;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Mr Thompson has not engaged with the NMC and has not responded to any of the letters sent to him about this hearing;
- 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 Thompson.

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

The panel decided to replace the current conditions of practice order with a suspension order.

This order will come into effect at the end of 5 June 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of three years by a Fitness to Practise Committee panel on 3 November 2017. The first review took place on 27 October 2020 and the order was varied and extended for a further 12 months. The second review took place on 5 November 2021 when the reviewing panel confirmed and extended the conditions of practice order for a further six months.

The current order is due to expire at the end of 5 June 2022.

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

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

*'That you,*

1. *On 11 January 2015, when you encountered Patient A making a ligature attempt which you knew or should have known from Patient A's notes was a second ligature attempt that day:*

a. ...

b. *Did not record any, or any adequate, rationale for why Patient A was continued on level 2 observations. **[proved]***

c. *Did not record what, if any, conversations you had with Patient A. **[proved]***

d. *Did not complete an incident report. **[admitted and found proved]***

2. *On 12 January 2015:*

a. *Did not escalate to Colleague C at the multidisciplinary team meeting that Patient A had made more than one ligature attempt since 10 January 2015. **[admitted and found proved]***

b. ...

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

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

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

*In relation to insight, the panel noted that the last reviewing panel was of the view that Mr Thompson's reflective piece focused heavily on system failures rather than identified actions and training he could take to remedy his practice should he find himself in similar circumstances in the future. The last reviewing panel therefore found that his insight needed to develop further in this regard. Today's panel considered that it had not received a further reflective statement from Mr Thompson and therefore it considered that while Mr Thompson had demonstrated that he had developing insight, he had not sufficiently addressed the highlighted areas of reflection as described by the last reviewing panel.*

*The panel had regard to the fact that Mr Thompson has not practised as a nurse since 2015. It had regard to the following statement in the determination of the last reviewing panel on 27 October 2020:*

*"The panel was of the view that a period of 12 months would afford Mr Thompson an opportunity to obtain employment as a nurse, undertake training in the specific areas identified, and demonstrate compliance with the conditions of practice order. The panel was of the view that a varied conditions of practice order will focus on the remediation of Mr Thompson's deficiencies in his practice and support him in his desire to return to practice."*

*The panel noted that it had no evidence before it that Mr Thompson has undertaken any courses to remedy the various shortcomings in his practice identified at the substantive hearing, or evidence to show how he has kept up to date with his nursing practice since the substantive hearing and the last review hearing. The panel were informed that Mr Thompson had not worked as a nurse since the last review hearing and therefore could not successfully engage and comply with the conditions. The panel therefore found that, although remediable, Mr Thompson had not remedied the misconduct, and as such there remains a risk of repetition. 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 but also consider the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel was of the view that in light of the fact that Mr Thompson has not fully complied with the current conditions of practice order, a finding of continuing impairment on public interest grounds is also required to maintain confidence in the nursing profession.*

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

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

*'Having found Mr Thompson'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 Articles 29 and 30 of the Order. The panel has also taken into account the NMC's Sanctions Guidance 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 public protection issues identified. The panel decided that it would not be 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 public protection issues identified, an order that does not restrict Mr Thompson's practice would not be appropriate in the circumstances. The panel decided that it would not be proportionate nor in the public interest to impose a caution order.*

*The panel next considered whether imposing a further conditions of practice order on Mr Thompson'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 Mr Thompson has been subject to a condition of practice order for four years and has yet to comply with conditions. It had regard to the following statement from the email sent by Mr Thompson, dated 30 September 2021: "It may be easier to be removed from the register as reapplying seems much more straight forward." The panel considered that Mr Thompson appeared to suggest, on one possible reading, that he wishes to be removed from the register, in the hope that he could then reapply.*

*The panel considered that it could allow the order to lapse upon its expiry and it had regard to the following guidance:*

*FTP – Library: Allowing orders to expire when a nurse or midwife's registration will lapse - REV3h [2018], which states the following:*

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

*Taking this option is likely to be appropriate if:*

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

*The guidance goes on to say:*

...

***Nurse, midwife or nursing associate doesn't want to continue practising***

*Because nurses, midwives and nursing associates can apply for readmission to the register as soon as their registration lapses, it is important that the panel is sure that the nurse, midwife or nursing associate no longer wants to practise before it decides to let an order expire. This is because if the panel has found the nurse, midwife or nursing associate's fitness to practise to be currently impaired, the nurse, midwife or nursing associate will not have addressed the concerns about their practice, and will not have shown the panel that they do not present a risk to patients. The nurse, midwife or nursing associate will need to give the panel a clear explanation of their plans for the future away from nursing or midwifery. Such information is only likely to be available if the nurse, midwife or nursing associate is in contact with us, so it will be important for panels to consider if the nurse, midwife or nursing [SIC] associate is fully engaging with the process before deciding to take this option.'*

*The panel considered that it had not been provided by Mr Thompson with any clear evidence that he has a settled intention to permanently leave the nursing profession or whether he wishes to remain on the register. The panel could not be satisfied that Mr Thompson has understood these proceedings, and concluded that it would be inappropriate to allow the order to lapse in these circumstances and that some form of restriction on Mr Thompson's practice was necessary to protect the public and meet the public interest.*

*The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. It was satisfied that a conditions of practice order would address the failings highlighted in this case and is sufficient to protect patients. The conditions would also address the wider public interest issues during the period they are in force.*

*The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate at this time and would not be a reasonable response in the current circumstances of Mr Thompson's case.*

*Accordingly, the panel determined, pursuant to Article 30(1)(c) to extend the conditions of practice order for a period of 6 months, which will come into effect on the expiry of the current order, namely at the end of 5 December 2021. The panel was of the view that a period of 6 months would afford Mr Thompson a further opportunity to clearly indicate his settled career intentions and whether he wishes to engage with conditions and demonstrate a period of safe and effective practice. The panel was of the view that a conditions of practice order for 6 months will allow him sufficient time to clarify with his regulator his future intentions whilst adequately protecting the public. It decided a confirmation of the following conditions 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. You must inform the NMC when you obtain a nursing position and keep the NMC informed about anywhere you are working by:
  - a) Telling your case officer within seven days of accepting or leaving any employment.*
  - b) Giving your case officer your employer's contact details.**
  
- 2. You must keep the NMC informed about anywhere you are studying by:
  - a) Telling your case officer within seven days of accepting any course of study.**

*b) Giving your case officer the name and contact details of the organisation offering that course of study.*

*3. You must immediately give a copy of these conditions to:*

- a) Any organisation or person you work for.*
- b) Any agency you apply to or are registered with for work.*
- c) Any employers you apply to for work (at the time of application).*
- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
- e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

*4. You must work with your workplace mentor or supervisor who is a registered nurse to create a personal development plan (PDP). Your PDP must address the deficiencies identified in your practice relating to*

- a) reporting incidents*
- b) escalation of incidents and concerns, and*
- c) documentation of incidents.*

- The PDP must include comments and observations from your workplace mentor or supervisor on your progress in remedying the above deficiencies*
- The PDP must outline how you have applied or could apply the NMC's guidance on raising concerns 2019 into your practice.*

5. You must:
  - a) Provide the NMC with details of your workplace mentor or supervisor once identified
  - b) Send your case officer a copy of your PDP 14 days prior to any review hearing
  - c) Initially meet with your workplace mentor or supervisor at least every 2 weeks for the first 2 months, and then at intervals as identified by your mentor or supervisor to discuss your progress towards achieving the aims set out in your PDP.
  
6. You must tell your case officer, within seven days of your becoming aware of:
  - a) Any clinical incident you are involved in.
  - b) Any investigation started against you.
  - c) Any disciplinary proceedings taken against you.
  
7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
  - a) Your workplace mentor or supervisor
  - b) Any current or future employer
  - c) Any educational establishment
  - d) Any other person(s) involved in your retraining and/or supervision required by these conditions

*This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 5 December 2021 in accordance with Article 30(1).'*

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

The panel has considered carefully whether Mr Thompson'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. It has taken account of the submissions made by Ms Marcelle-Brown on behalf of the NMC.

Ms Marcelle-Brown referred the panel to an email included in the previous panel's determination. This email was from Mr Thompson to the NMC, dated 30 September 2021, regarding his future plans for employment which are as follows:

*'I Donald Thompson can see no easy way to return to the workforce as my original intentions to complete a return to nursing and seek any additional advice and guidance has been hampered by the covid changes. If a simple explanation could be provided regarding how to apply for post with information I should declare.  
Registration costs and periods requiring payment.  
Meeting prep/ return to work requirements.  
After obtaining employment subsequent requirements.  
having a NHS pension the implications for work.  
Due to the uncertainty of the above I have been undertaking other employment and activities. It may be easier to be removed from the register as reapplying seems much more straight forward.'*

Ms Marcelle-Brown submitted that this email indicates that Mr Thompson is not currently working in the profession. However, she told the panel that Mr Thompson has not explicitly expressed a desire to leave the profession permanently.

Ms Marcelle-Brown told the panel that Mr Thompson has not been working as a registered nurse and therefore the conditions of practice have yet to be engaged. Accordingly, there is no evidence to show that he has addressed the concerns associated with his nursing practice. She submitted that there is no information before the panel to demonstrate that Mr Thompson has strengthened his practice and in light of this, she submitted that there

remains a risk of repetition of the conduct of the kind found proved. Ms Marcelle Brown submitted that there is no new information to undermine a continued finding that Mr Thompson's fitness to practise remains impaired. She submitted that the burden is on Mr Thompson to demonstrate that his fitness to practise is no longer impaired.

Ms Marcelle-Brown submitted that the current conditions should be confirmed and that the current conditions sufficiently protect the public and satisfy the wider public interest.

Ms Marcelle-Brown reminded the panel that the original substantive order was imposed in 2017 and that this reviewing panel has the option to impose a striking-off order. She also invited the panel to consider Mr Thompson's wishes to allow the current order to lapse so that he could reapply.

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 Thompson's fitness to practise remains impaired.

The panel noted that the last reviewing panel found that Mr Thompson had insufficient insight. This reviewing panel had sight of an email included in the previous panel's determination from Mr Thompson to the NMC, dated 30 September 2021, in which he stated the following:

*'It may be easier to be removed from the register as reapplying seems much more straightforward'.*

In light of this, the panel is of the view that Mr Thompson has not demonstrated that he understands the gravity of the shortcomings in his practice and that he has not shown sufficient insight into the conduct found proved. The panel also considered that Mr Thompson has disengaged with the NMC's proceedings, and the panel does not have any up to date reflections from him.

In its consideration of whether Mr Thompson has taken steps to strengthen his practice, the panel took into account that there is no information to indicate he has strengthened his practice, nor that he has shown any intention to strengthen his practice. Further, it considered that Mr Thompson has not practised since 2015 and the nursing practice has developed in this time. It is of the view that keeping up to date with any training is a requirement for any registered nurse in order to maintain the necessary skills to be a safe practitioner.

The last reviewing panel determined that Mr Thompson was liable to repeat matters of the kind found proved. Today's panel has received no further information regarding Mr Thompson's practice. In light of this, this panel determined that the situation remains unchanged, and Mr Thompson 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. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required. It noted that an informed member of the public would be concerned should Mr Thompson be allowed to practise without restriction given that he has not shown sufficient insight and that he has failed to demonstrate that he has taken steps to strengthen his practice given the charges found proved.

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

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

Having found Mr Thompson'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. This would allow the order and his registration to lapse but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. It considered Mr Thompson's suggestion for the panel to allow the current order to lapse so that he could re-join the register as it would be '*easier*'. The panel had regard to the NMC guidance on allowing orders to lapse having found current impairment and was of the view that Mr Thompson had not clearly indicated an intention not to return to nursing practice.

The panel then considered the imposition of a caution order but determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Thompson'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 Thompson'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 imposing a conditions of practice order on Mr Thompson'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 next considered the continuation of the current conditions of practice order. It considered that Mr Thompson has not practised as a registered nurse since 2015 and it was of the view that he has not demonstrated he has taken steps to strengthen his practice. It was of the view that Mr Thompson has not fully engaged with the NMC or the conditions that have been previously imposed on his registration, nor is there any reason to suggest that this lack of engagement will change with a further continuation of a conditions of practice order. It also noted that there is no information before it to conclude that Mr Thompson is willing to comply with any conditions imposed upon their practice.

On this basis, the panel concluded that a conditions of practice order is no longer practicable in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore 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 12 months would provide Mr Thompson with an opportunity to engage with the NMC and to provide evidence that he has strengthened his practice. It considered this to be the most appropriate and proportionate sanction available.

The panel considered imposing a striking-off order. However, it determined that imposing a striking-off order would be disproportionate at this stage as Mr Thompson has not explicitly outlined what his intentions are for the future.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 5 June 2022 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:

- A clear and detailed statement of Mr Thompson's settled career intention as to whether he wishes to practise as a nurse and therefore remain on the register
- A written reflective piece demonstrating insight into the conduct found proved.
- Evidence of any further training undertaken to maintain his nursing skills.
- References from any paid or unpaid work.

This will be confirmed to Mr Thompson in writing.

That concludes this determination.