

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

**Substantive Order Review Meeting
Friday 7 January 2022**

Virtual Meeting

Name of registrant: Christopher John Foxall

NMC PIN: 76J0838E

Part(s) of the register: Registered Nurse – RN 2
Adult Nursing (14 November 1978)
Registered Nurse – RN3
Mental Health Nursing (22 March 1983)

Area of registered address: Cheshire

Type of case: Misconduct

Panel members: Peter Cadman (Chair, Lay member)
Mark Gibson (Registrant member)
Jennifer Portway (Lay member)

Legal Assessor: Nigel Ingram

Panel Secretary: Teige Gardner

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

Fitness to practise: Impaired

Outcome: **Strike-off order to come into effect
immediately in accordance with Article 30 (2)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Mr Foxall was not in attendance and that the Notice of Meeting had been sent to Mr Foxall's registered email address on 29 November 2021.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, and the time and date of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Foxall has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Decision and reasons on review of the substantive order

The panel decided to impose a striking off order.

This order will come into effect immediately in accordance with Article 30(2) 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.

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

The panel is reviewing the order pursuant to Article 30(2) of the Order.

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

"That you a registered nurse

1. On or around the 21 November 2017 whilst working for Avandale Lodge Nursing Home

1.1 Drew up 2.3 mls of medication for Resident A when the correct dose was 2.5mls.

1.2 You incorrectly placed your initials over Colleague A's signature on the MAR chart for Resident B;

1.3 Gave Resident C an incorrect dosage of Sinemet

1.4 Gave Resident D an incorrect dose of sertraline

1.5 Did not administer and/or record that you had given 100mg of Carbamazepine to Resident E

1.6 Did not administer and /or record that you had given 30mg of Mirtazapine to Resident E

1.7 Did not administer and/or record that you had given a Foodlink supplement to Resident E

1.8...

2 Whilst working for the Four Seasons Nursing Home

2.1 On 31 August 2017 did not administer Resident I's Fentanyl patch in a timely manner;

2.2 On 31 August 2017 misplaced Resident I's Fentanyl patch

2.3 On 31 August 2017 did not report that you had misplaced Resident I's Fentanyl patch

2.4....

2.5 On an unknown date in November 2017 left medication in Resident G's room which was not hers

2.6 On an unknown date in November 2017 left two inhalers in Resident G's room that were not hers

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 considered that limbs a, b and c of Dame Janet Smith’s test, as set out above, were engaged by Mr Foxall’s past actions and omissions. The panel considered that patients were placed at risk of harm by Mr Foxall’s poor practice in medicines administration and record keeping. The panel considered that members of the public would expect nurses to safely administer medication to patients and to maintain appropriate records, and therefore was of the view that his actions and omissions brought the profession into disrepute. The panel also considered that Mr Foxall breached fundamental tenets of the profession, with his repeated failings relating to basic areas of nursing practice.

The panel went on to consider whether Mr Foxall remained liable to act in a way which could put patients at risk of harm, bring the profession into disrepute or breach fundamental tenets of the profession in the future. In doing so, the panel assessed whether there was any evidence of remorse, insight and remediation.

The panel recognised that Mr Foxall made admissions to some of the charges during local level investigations. He had also accepted the regulatory concerns in an e-mail to the NMC dated 23 February 2018. However, the panel considered that Mr Foxall had demonstrated only limited insight. During the local level meeting conducted by Mr 1, whilst accepting some of the issues raised, Mr Foxall did not appear to recognise the potential harm that could have been caused to patients as a result of his conduct. Furthermore, during the investigation meeting, Mr Foxall offered no apology for his actions nor demonstrated any genuine remorse for them.

In considering whether there was any evidence of remediation, the panel noted that in his e-mail to the NMC, Mr Foxall stated that he did not wish to practise as a nurse anymore, and that he was not currently working. There was no evidence to suggest that Mr Foxall had worked as a nurse since February 2018 and that he had been able to demonstrate a period of safe and effective practice without further concern. Furthermore, there was no evidence of any other training or remedial steps taken to address the concerns highlighted with his practice.

In light of the lack of sufficient evidence of remorse, insight and remediation, the panel considered that a risk of repetition remains. It considered that Mr Foxall

remained liable to act in a way which could put patients at risk of harm, bring the profession into disrepute or breach fundamental tenets of the profession in the future. The panel therefore determined 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that patients, families and members of the public place trust in nurses to safely administer medication and to uphold good standards of record keeping. The panel considered that in light of Mr Foxall's actions and omissions, public confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

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

The original panel determined the following with regard to sanction:

"The panel considered this case very carefully and decided to make a Conditions of Practice order, for a period of 24 months. The effect of this order is that Mr Foxall's entry on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

In reaching this decision, the panel has had regard to all the documentary evidence in this case. The panel accepted the advice of the legal assessor. The panel bore 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 first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- *There are multiple failings relating to a number of residents.*
- *Mr Foxall's actions presented a risk of harm to residents in his care.*
- *Mr Foxall's poor medicines administration was in relation to a wide range of medication including a controlled drug.*
- *Mr Foxall has demonstrated a lack of remorse and insight, in relation to the concerns raised.*

Mitigating factors:

- *Mr Foxall made some admissions during the investigation undertaken by the Agency and he accepted the regulatory concerns put to him by the NMC.*
- *Mr Foxall's long and unblemished career as a registered nurse prior to these concerns.*
- *His personal circumstances at the time.*

The panel then went onto consider what action, if any, to take in this case.

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.

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, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.'

The panel considered that Mr Foxall's misconduct was not at the lower end of the spectrum, and as such a caution order would be inappropriate in view of the seriousness of the case, and the risk of repetition 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 placing conditions of practice on Mr Foxall'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 general incompetence;*
- 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.

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 would not be a reasonable response in the circumstances of Mr Foxall's case.

The panel decided that, although there had been a clear breach of a fundamental tenet of the profession, and that professional standards need to be upheld and promoted, the public interest is also satisfied by trying to assist a good nurse, who otherwise has had an unblemished career, to return to practise.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order can effectively manage the risk of repetition. It will also meet the need to maintain 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.

The panel determined that the following conditions are appropriate and proportionate in light of Mr Foxall's misconduct to protect the public and satisfy the public interest 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 ensure that you are supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.*
- 2. You must not administer medication unless under the direct supervision and observation of another registered nurse, until such time as you have been assessed by your employer as competent to administer medication unsupervised.*
- 3. You must meet with your line manager or supervisor (or their nominated deputy) at least once a month to discuss the standard of your performance and your progress in relation to medicines administration and record keeping.*
- 4. Prior to any NMC review hearing or meeting, you must send a report from your line manager, or supervisor (or their nominated deputy) setting out the standard of your performance, with particular reference to medicines administration and record keeping.*
- 5. You must keep us 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.**

6. *You must keep us 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.*

7. *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*

8. *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.*

9. *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) *Any current or future employer.*
 - b) *Any educational establishment.*
 - c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The panel decided that a conditions of practice order for a period of 24 months was appropriate in this case. The panel considered that Mr Foxall had not engaged

with the NMC since February 2018 so this will give him the opportunity to apply any training his (sic) needs in order to return to practice.”

Decision and reasons on current impairment

The panel has considered whether Mr Foxall’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. The panel noted that Mr Foxall has not engaged with the NMC since February 2018.

The panel 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 Foxall’s fitness to practise remains impaired.

The panel noted that Mr Foxall has not engaged with the NMC since February 2018. Therefore, he has not shown evidence of insight or strengthening his practice since the original order was imposed nor has he engaged with the previous panel’s suggestions. The panel was therefore of the view that Mr Foxall remains impaired on the grounds of public protection for the same reasons provided by the previous panel.

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 Mr Foxall's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Foxall 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 Mr Foxall'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 Foxall'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 a conditions of practice on Mr Foxall'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 conditions imposed on Mr Foxall's practice are not onerous. Further, the panel noted that Mr Foxall had previously advised the NMC that he no longer wanted to work as a registered nurse, and he has not engaged with the NMC process since February 2018, and his registration fee lapsed in February 2019. In view of Mr Foxall's intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a suspension order. The panel noted that Mr Foxall does not intend to return to nursing and has not provided evidence of insight for his misconduct, any evidence of taking steps to strengthen his practice, and no evidence of further insight into his failings. Further, Mr Foxall has not engaged with the NMC process since February 2018. In these circumstances the panel determined that a period of suspension would not serve any useful purpose. The panel determined that it was necessary to take action to prevent Mr Foxall 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. The panel therefore directs the registrar to strike Mr Foxall's name off the register.

This striking-off order will replace the current conditions of practice order with immediate effect in accordance with Article 30(2).

This will be confirmed to Mr Foxall in writing.

That concludes this determination.