

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

**Substantive Order Review Hearing
Thursday 9 June 2022**

Virtual Hearing

Name of registrant: Jonathan Evans Johns

NMC PIN: 88J0620E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – (December 1992)
Mental Health Nursing – (August 1995)

Relevant Location: Armagh City, Banbridge and Craigavon

Type of case: Misconduct

Panel members: Denford Chifamba (Chair, Registrant member)
Jacqueline Metcalfe (Registrant member)
Clare Taggart (Lay member)

Legal Assessor: Martin Goudie QC

Hearings Coordinator: Charis Benefo

Nursing and Midwifery Council: Represented by Megan Millar, Case Presenter

Mr Johns: Not present and unrepresented

Order being reviewed: Suspension order (3 months)

Fitness to practise: Impaired

Outcome: **Suspension order (6 months) to come into effect at the end of 3 August 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 Johns was not in attendance and that the Notice of Hearing had been sent to Mr Johns' registered email address on 11 May 2022.

Ms Millar, 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 link to the virtual hearing and, amongst other things, information about Mr Johns' 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 Johns 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 Johns

The panel next considered whether it should proceed in the absence of Mr Johns. The panel had regard to Rule 21 and heard the submissions of Ms Millar who invited the panel to continue in the absence of Mr Johns.

Ms Millar referred the panel to the email from Mr Johns dated 5 May 2022 in which he informed his NMC Case Officer that he will not be engaging with any further disciplinary proceedings. Mr Johns stated that the proceedings can continue if the NMC so wishes, and that he has moved on and does not wish to be contacted again.

Ms Millar submitted that Mr Johns had voluntarily absented himself. She submitted that there has been no application requesting an adjournment of today's proceedings, and no

information to suggest that an adjournment would secure Mr Johns' 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 Johns. In reaching this decision, the panel has considered the submissions of Ms Millar, the representations from Mr Johns, 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 Mr Johns;
- Mr Johns has informed the NMC in an email dated 5 May 2022 that he does not wish to engage with the proceedings;
- There is no reason to suppose that adjourning would secure his attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

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

Decision and reasons on review of the substantive order

The panel decided to impose a further suspension order for a period of six months.

This order will come into effect at the end of 3 August 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of three months by a Fitness to Practise Committee panel on 21 March 2022.

The current order is due to expire at the end of 3 August 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:

1. On or after 2 June 2019, removed from a secure cupboard knives which had been previously taken from Colleague 2:

- a. without clinical justification;*
- b. despite advice/ instructions from Colleague 1 to the contrary.*

2. On 3 June 2019, returned the knives to Colleague 2:

- a....*
- b. without collaborating with any colleague or more senior practitioner;*
- c....*
- d. without clinical justification.*

3. On 16 June 2019 accessed Colleague 2's medical records:

- a. without consent;*
- b. without clinical justification.*

And by reason 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 next went on to decide if as a result of the misconduct, Mr Johns' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved

ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel found that Mr Johns' actions in accessing Colleague 2's patient records without consent or clinical justification caused her distress. In breaching GDPR, the panel determined that Mr Johns' actions brought the profession into disrepute and breached fundamental tenets of the profession.

The panel was of the view that whilst Mr Johns' misconduct was remediable, he has not provided any evidence that he has learned from his mistakes and strengthened his practice. The panel noted that Mr Johns had demonstrated some remorse for the distress that his actions caused to Colleague 2, but he has not provided any reflection that specifically focusses on the data protection breach. The panel is of the view that there is a risk of repetition based on Mr Johns' lack of insight and in the absence of any evidence that he has strengthened his practice. 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.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Johns' fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'Having found Mr Johns' fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. 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 SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Mr Johns accessed Colleague 2's patient files after he was made aware of a complaint that she had made against him without making a record or disclosing what he had done.*
- He has not demonstrated insight into the impact of accessing Colleague 2's patient files without consent or clinical justification.*
- In accessing Colleague 2's patient files without her consent he caused her distress.*
- Mr Johns acted in a way which breached his position of trust.*

The panel also took into account the following mitigating features:

- It was a one-off incident in a long career as a registered nurse.*

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 Johns' 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 Johns' 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 placing conditions of practice on Mr Johns' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel determined that, as a registered nurse, Mr Johns would have been aware of GDPR and his responsibilities under the Code in respect of appropriately accessing patient records. The panel therefore determined that the misconduct identified in this case was a deliberate act and as such was not something that can be addressed through retraining or by placing restrictions on his practice and, as a consequence, a conditions of practice order would be inappropriate in the circumstances.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, it was a single isolated incident and there was no evidence of repetition since 2019 when this incident occurred. The panel therefore determined that the misconduct was not fundamentally incompatible with Mr Johns remaining on the register.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Johns' case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mr Johns. However this is outweighed by the public interest in this case.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of three months was appropriate in this case to mark the seriousness of the misconduct.

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

Any future panel reviewing this case would be assisted by:

- Mr Johns' engagement and attendance at the review hearing.*
- A reflective statement demonstrating insight into the charges found proved.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Johns' 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 representations from Mr Johns. It has taken account of the submissions made by Ms Millar on behalf of the NMC. She provided a background to the case and referred the panel to the decision and reasons of the original panel on 21 March 2022.

Ms Millar referred the panel to the email from Mr Johns dated 5 May 2022 which stated:

'I have made my feelings and given you my account of events on numerous occasions...After 30 years of nursing,I have left my post as a nurse and do not want to ever work as a nurse....I have asked that my name be removed from your NMC register..[PRIVATE]...I have received a number of emails from your department,i will not be responding to these...You can continue on if you so wish and have a longwinded one sided analysis of an event a number of years backwhen I offered an ex patient back her property that I had taken off her when she was vulnerable and in crisis...I have moved on and do not wish to be contacted again...have your enquiry and use the evidence and my thorougher accounts and statements that I have provided...If you do contact me again I will have no hesitation but to consider legal action against you for harassment and [PRIVATE]' [sic].

Ms Millar submitted that it is a matter for the panel to decide whether Mr Johns is still impaired. She asked the panel to bear in mind Mr Johns' lack of insight into his misconduct. She submitted that he does not seem to have taken any steps to address the findings of the original panel on 21 March 2022. Ms Millar submitted that Mr Johns has made it clear from his email dated 5 May 2022 that he no longer wishes to practise as a nurse and has no motivation to address the misconduct found by the original panel.

Ms Millar submitted that if the panel finds that Mr Johns is still impaired, then there are two options she would invite the panel to consider. She submitted that the panel could decide to extend the current suspension order. Alternatively, she submitted that the panel may take into account Mr Johns' email in which he asked for his name to be removed from the NMC register, and impose a striking off order.

Ms Millar referred the panel to the NMC Case Officer's reply to Mr Johns in an email dated 6 May 2022. The email stated that:

'I note your request to be removed from the NMC register. We will include your email in the papers for the hearing on 9 June 2022 so the panel are aware of this request. If there is anything else you would like to tell the panel then please send it to me via email before 9 June.'

Ms Millar submitted that the NMC has not received anything further from Mr Johns. She submitted that there is no evidence to suggest that Mr Johns has addressed the underlying issues with his practice, and so a further period of suspension or a striking off order will be appropriate in this case.

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 Johns' fitness to practise remains impaired.

The panel noted that the original panel found that Mr Johns lacked insight. At this hearing, the panel considered the lack of engagement from Mr Johns and his email dated 5 May 2022. It noted that there was no new information to indicate that his insight has developed, that the concerns identified have been addressed or that he has taken steps to strengthen his practice.

The panel determined that Mr Johns did not appear to appreciate the seriousness of the issues identified with his practice in the email dated 5 May 2022. The panel was of the view that this email demonstrated deep-seated attitudinal issues.

The original panel determined that there was a risk of repetition. In light of the lack of information to suggest that Mr Johns has strengthened his practice, this panel concluded that there remains a high risk that Mr Johns will 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.

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

Decision and reasons on sanction

Having found Mr Johns' 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 Johns' 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 Johns' 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 order on Mr Johns' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing. It also took into account the

evidence of Mr Johns' deep-seated attitudinal problems, his lack of insight and his indication that he no longer intends to practise as a nurse. The panel concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. The panel was not able to formulate workable conditions of practice that would adequately address the concerns relating to Mr Johns' misconduct or serve any useful purpose.

The panel considered the imposition of a further period of suspension. The panel noted Mr Johns' lack of engagement with the NMC, his email dated 5 May 2022 and its finding that he is still impaired. The panel was concerned that the imposition of a further period of suspension might not have any useful effect and so it considered whether a striking off order would be appropriate.

The panel considered that Mr Johns' email indicated that he has left his post as a nurse, does not wish to return to nursing practice and would like his name to be removed from the NMC register. However, the panel was of the view that this email was understandably emotionally charged. The panel was concerned about [PRIVATE] and his understanding of the regulatory process to have his name removed from the register at the time this email was sent. It decided to allow Mr Johns a further opportunity to reflect and reach a clear and settled decision on whether he would like to return to nursing practice. It determined that Mr Johns should be afforded adequate time to develop his insight and take steps to strengthen his practice in the event that he does decide that he wants to remain in nursing. The panel concluded that it would not impose a striking off order on this occasion.

The panel determined therefore that a suspension order is the appropriate and proportionate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of six months would provide Mr Johns with an opportunity to engage with the NMC and, [PRIVATE], indicate his clear and settled intentions on his future nursing practice. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 3 August 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:

- Mr Johns' engagement and attendance at the review hearing;
- A reflective piece that reflects on how the public would view Mr Johns' behaviour, how the profession would view it, and how he views it in hindsight;
- An update on Mr Johns' intentions on whether he wishes to remain on the NMC register or continue practising as a nurse; and
- Evidence of completed learning on GDPR and the importance of patient confidentiality and appropriate use of patient records.

This will be confirmed to Mr Johns in writing.

That concludes this determination.