

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

**Substantive Order Review Hearing
Friday 6 January 2023**

Virtual Hearing

Name of Registrant:	Betty Anne Gay
NMC PIN	13H3547E
Part(s) of the register:	Registered Nurse: Adult (February 2014)
Relevant Location:	Staffordshire
Type of case:	Lack of competence
Panel members:	Anthony Kanutin (Chair, lay member) Manjit Darby (Registrant member) Clare Taggart (Lay member)
Legal Assessor:	Tracy Ayling
Hearings Coordinator:	Anna Girling
Nursing and Midwifery Council:	Represented by Amy Woolfson, Case Presenter
Mrs Gay:	Present and unrepresented
Order being reviewed:	Conditions of practice order (24 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (24 months) to come into effect at the end of 17 February 2023 in accordance with Article 30(1)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Woolfson, on behalf of the Nursing and Midwifery Council (NMC), made a request that parts of this case be held in private on the basis that exploration of your case involves discussion of your private life. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported this application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session in connection with your private life as and when such issues are raised in order to protect your privacy

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 17 February 2023 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 15 months by a Fitness to Practise Committee panel on 17 April 2018. This was reviewed on 2 July 2019 and a further conditions of practice order was imposed for 18 months. This was last reviewed on 12 January 2021 and a further varied conditions of practice order was imposed for 24 months.

The current order is due to expire at the end of 17 February 2023.

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:

1. ...

2. ...

3. ...

4. *Whilst employed by Barchester at Hilderstone Hall Care Home, between approximately November 2015 and March 2016, you failed to demonstrate the standard of knowledge, skill, and judgement required for practice without supervision as a Registered Nurse, in that:*

4.1 On one or more occasions, you took excessive time to complete medication rounds;

4.2 On one or more occasions, you did not complete Resident MAR charts contemporaneously;

4.3 On or before 29 December 2015 you administered medication to a nil by mouth resident who was on a PEG;

4.4 On or around 18 January 2016:

a. You attempted to re-catheterise a resident in an unsafe and unsuccessful manner;

b. You asked a care assistant to retrieve the soiled catheter and leg bag from the waste and to wash it under the tap for re-use;

4.5 On 18 February 2016 you gave medication to an incorrect patient;

4.6 On or before 7 March 2016:

- a. ...;
- b. You steri-stripped a resident's skin tear in an inappropriate manner;
- c. In relation to a palliative care resident with a chest infection, you:
 - (i) ...;
 - (ii) Failed to carry out and/or record observations;
- d. In relation to a resident who was susceptible to infections and was showing signs of a urinary tract infection, you failed to carry out and/or record any observations;

4.7 During the nightshift of 12 March 2016:

- a. When Resident A suffered a fall:
 - (i) You failed to perform and/or document physical observations and/or post-falls assessments of Resident A;
 - (ii) ...;
 - (iii) You were unable to provide appropriate information to the emergency services call handler;
 - (iv) ...;
- b. When Resident B suffered a fall, you:

- (i) Failed to perform and/or document physical observations and/or post-falls assessment;*
- (ii) Failed to respond appropriately in that you did not communicate with Resident B, and/or did not provide staff with any direction;*
- (iii)*

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

'The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had developing insight. At this hearing you demonstrated an understanding of how your actions put patients at a risk of harm and demonstrated a limited understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has had no information before it to demonstrate that your fitness to practise is no longer impaired. There has been no CPD undertaken, no clinical practice completed, and no other efforts to improve your clinical knowledge and skills. In light of this, this panel determined that you are 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 as this matter relates to an issue of competence and not misconduct, the test of whether public interest is engaged in Council for Healthcare Regulatory Excellence v (1) Nursing

and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) is not itself engaged. As such, the panel determined that a finding of continuing impairment on public interest grounds, unrelated to public safety, is not required.

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

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

'The panel next considered whether imposing a varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable.

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 accepted that you have been unable to comply with conditions of practice due to your current employment status but you are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions that could be formulated which would protect patients 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 and would not be a reasonable response in the circumstances of your case because you have expressed your desire to return to the nursing profession and have made significant attempts to secure employment. The panel is of the view that you must still be given the opportunity to remediate concerns into your clinical competence.

With regard to condition 2, the panel determined that all the listed areas are required in your conditions of practice order to adequately protect the public given the wide-ranging concerns into your clinical competence. However, the panel decided to reduce the areas required for your PDP to only Communication with patients and colleagues and Record keeping and documentation by restricting your practice and not allowing you to carry out Administration and Management of Medication, Wound Management, Urinary Catheterisation and Management of PEG patients until deemed competent in writing by a registered nurse of Band 5 or above after at least three occasions of direct supervision.

Further, the panel decided to remove the requirement in condition 1 for you to be indirectly supervised by a nurse with more than 5 years post qualification experience as this would be too ambiguous for a potential employer.

Accordingly, the panel determined, pursuant to Article 30(1)(b) to make a varied conditions of practice order for a period of 24 months, which will come into effect on the expiry of the current order, namely at the end of 17 February 2021. It decided to impose the following conditions 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. You must be supervised at any time you are working. This means working at all times on the same shift as, but not always directly observed by, a registered nurse of Band 5 or above.

2. You must not do ANY of the following:

- a) *Administer medication;*
- b) *Manage medication;*
- c) *Manage wounds;*
- d) *Deal with urinary catheters, and;*
- e) *Manage PEG fed patients.*

UNLESS:

i) You are directly supervised by another registered nurse of Band 5 or above, OR

ii) You have been certified as competent to perform the relevant activity without supervision. Any such certification must be by a registered nurse of Band 5 or above who has directly observed you performing the relevant activity on no less than three occasions. The certification must be in writing and signed by the nurse in question (quoting their PIN). A copy of the certification must be sent by you to the NMC within 14 days of you receiving it.

3. You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan (PDP) specifically designed to address the deficiencies in the following areas of your practice:

- a) *Communication with patients and colleagues, and;*
- b) *Record keeping and documentation.*

4. You must:

a) Send the NMC a copy of your PDP within 14 days of it being created;

b) Meet with your line manager, mentor or supervisor (or their nominated deputy) at least fortnightly for the first four months of your employment and thereafter at least monthly to discuss your progress towards achieving the aims set out in your PDP;

c) Send the NMC a report from your line manager, mentor or supervisor (or their nominated deputy) showing your progress towards achieving the aims set out in your PDP every six months and 28 days prior to any NMC review hearing.

5. You must 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.

6. 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.

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.'

Decision and reasons on current impairment

This panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In

considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, and the written correspondence between you and the NMC. The panel has taken account of the submissions made by Ms Woolfson and submissions made by you.

Ms Woolfson briefly outlined the background to the case. She clarified that the charges found proved at the original hearing were: 4.1, 4.2, 4.3, 4.4a (only in relation to 'unsafe' and not 'unsuccessful'), 4.4b, 4.5, 4.6b, 4.6c ii (only in relation to 'record' and not 'carry out'), and 4.6d (only in relation to 'record' and not 'carry out'). She also clarified that although you had originally faced allegations of misconduct in addition to lack of competence, the allegations of misconduct had fallen away at the substantive hearing due to lack of evidence.

Ms Woolfson submitted that your fitness to practise remains impaired. She stated that at a review of a substantive order there is a burden on the registrant to demonstrate that they have remediated their practice. She submitted that you remain impaired because you have not complied in an active way with the existing conditions of practice, in that you have not been practising and so have not been able to demonstrate your compliance with the conditions.

Ms Woolfson stated that she recognised that it has been difficult for you to obtain suitable employment which would allow you to demonstrate compliance with the conditions, or to get a place on a return to practice course. She submitted, however, that the areas of concern in relation to your practice relate to basic elements not just of nursing but of personal care. She submitted, therefore, that these are areas of practice that you could demonstrate competency in, or progress towards competency in, while working in a non-registered role (e.g. medication, wound care, urinary care).

Ms Woolfson stated that she did not dispute that it has been difficult for you to gain either suitable employment or a place on a return to practice course. She submitted, however, that because you had not supplied evidence or documentation relating to the employers

and institutions you have contacted, or the responses you have received, that it is difficult to know what the exact reason is.

Ms Woolfson told the panel that the previous reviewing panel had stated that any future panel would be assisted by your attendance, a written reflection from you, evidence that you have kept up to date with nursing training, and testimonials from any employment whether paid or unpaid. She submitted that, other than your attendance today, you have not provided any of the other suggested materials that could have assisted the panel. She stated that as you have been working in a carer role you would have had the opportunity to provide testimonial references from this role which would have covered at least some of the areas of practice that previous panels had concerns about.

Ms Woolfson submitted that, taking all of this into account, you remain impaired due to a lack of competence and you should remain subject to a conditions of practice order. She submitted that the current conditions of practice should continue for a further period of two years. She stated that as you want to return to nursing practice it is more appropriate to keep you subject to conditions of practice rather than removing you from the register. She submitted, however, that it would not be appropriate to loosen the current conditions of practice given the lack of progress that you have demonstrated in relation to these, whatever the reason for this might be. She further submitted that a period of two years is appropriate as it will take you this long to strengthen your practice and to demonstrate this.

The panel also had regard to your verbal submissions. The panel noted that you chose to give submissions rather than sworn evidence. It was explained to you that this would carry less weight, and would limit the extent to which the panel could question you.

You submitted that the current conditions of practice have made it impossible for you to get a place on a return to practice course. You stated that you have been in touch with a number of universities, including Birmingham City, and that they have seemed willing to offer you a place until you have mentioned the current restrictions on your NMC PIN. You said you would 'love' to return to university and to get back to practice, and expressed a strong desire to gain a place on a return to practice course as the best way to change your current situation. You said that you are currently at your 'wit's end' with regard to your return to practice.

You stated that you had been working as a carer through an agency and that you had thought that this might enable you to gain employment as a nurse with the same employers, but that this had not happened.

You stated that the current situation is very frustrating and that you are currently at home, unable to get employment anywhere. You said that you had even considered moving to London for work. You said that no employers are willing to put on paper their reasons for not hiring you and so you are unable to provide the NMC with this information.

[PRIVATE]

You stated that you admitted that you had made errors in your practice but had believed that these were addressed in the workplace.

With regards to strengthening your practice, you stated that you read articles online and have purchased an online course. You stated that working as a carer has made you realise the importance of competence in registered nurses and that this has made you want to undertake a return to practice course. You informed the panel that you have been involved in the care of a patient with a catheter and that although you are not allowed to dress patients' wounds, you have reported to colleagues where wounds need to be cleaned. You also informed the panel that you were able to provide accurate information to a staff nurse as to how to treat a patient with a prolapsed uterus. You stated that your employer liked you working as a carer because of your knowledge and skills.

You informed the panel that if you had known that evidence from your role as a carer could have been provided as evidence to demonstrate how you are strengthening your practice, you would have done this 'in a heartbeat'.

You asked the panel to remove your current conditions of practice to allow you to attend a university return to practice course and to then return to practice.

Ms Woolfson submitted that, even if you had received negative responses, or no response, to your enquires to universities and employers, it would have been useful for

you to provide the panel with information about the enquires you have been sending out. Ms Woolfson also submitted that care homes may have not been interested in employing you if you were enquiring about nursing rather than non-nursing roles.

Ms Woolfson also stated that the record of the original substantive hearing shows that you admitted to one charge, but that a number of other charges were also found proved.

The panel heard and accepted the advice of the legal assessor, which included NMC Fitness to Practice Sanctions Guidance on 'Return to practice courses and the test of competence' (SAN-3c Last Updated 28/01/2020).

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 your fitness to practise remains impaired.

The panel had regard to the information provided by the previous panel as to how you could demonstrate that you have strengthened your practice. Despite the previous panel stating in its decision letter that a future panel would be assisted by 'Testimonials from any employment, paid or unpaid, you undertake', you have not provided any. The panel also noted that you seemed to believe that you could only provide evidence of how you have strengthened your practice in a role as a registered nurse rather than e.g. as a healthcare assistant or as a carer. Nevertheless, the panel determined that there is no evidence before it today as to how you have strengthened your practice in relation to the concerns previously identified and no information as to how you are addressing your competence (e.g. evidence of online courses, practical observations, etc.) The panel therefore concluded that the concerns about your practice remain unaddressed meaning that the risk of repetition remains high, and your practice remains impaired.

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.

The panel determined that an informed member of the public would be concerned that seven years on from the original allegations being made in 2016 that you have not yet taken active and practical steps to strengthen your practice.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your 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 and the potential risk to the public. 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 your 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 your lack of competence 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 further conditions of practice order on your 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 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 you have been complying with the current substantive conditions of practice in that you have not been practising as a registered nurse and consequently have not breached the terms of the conditions. The panel noted that you are engaging with the NMC and are willing to comply with any conditions imposed. The panel also noted, however, that the current conditions do allow the opportunity to provide evidence of how you are strengthening your practice while working in the care sector (including by providing testimonials, and documenting your experience and learning in relation to, for example, wound care, patient feeding, catheter care).

The panel acknowledged that you asked for the current conditions of practice order to be lifted entirely to allow you to apply for a return to practice course, but for the reasons explained in the legal advice provided to the panel, this is not an appropriate measure.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions that could be formulated which would protect patients 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 stage and would not be a reasonable response in the circumstances of your case. You have expressed a desire and intention to return to nursing practice. The panel also noted that the risks associated with this have not increased but have not been addressed.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of two years, which will come into effect on the expiry of the current order, namely at the end of 17 February 2023. It decided to impose the following conditions 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. You must be supervised at any time you are working. This means working at all times on the same shift as, but not always directly observed by, a registered nurse of Band 5 or above.

2. You must not do ANY of the following:

- a) Administer medication;
- b) Manage medication;
- c) Manage wounds;
- d) Deal with urinary catheters, and;
- e) Manage PEG fed patients.

UNLESS:

- i) You are directly supervised by another registered nurse of Band 5 or above, OR
- ii) You have been certified as competent to perform the relevant activity without supervision. Any such certification must be by a registered nurse of Band 5 or above who has directly observed you performing the relevant activity on no less than three occasions. The certification must be in writing and signed by the nurse in question (quoting their PIN). A copy of the certification must be sent by you to the NMC within 14 days of you receiving it.

3. You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan (PDP) specifically designed to address the deficiencies in the following areas of your practice:

- a) Communication with patients and colleagues, and;
- b) Record keeping and documentation.

4. You must:

- a) Send the NMC a copy of your PDP within 14 days of it being created;
- b) Meet with your line manager, mentor or supervisor (or their nominated deputy) at least fortnightly for the first four months of your employment and thereafter at least monthly to discuss your progress towards achieving the aims set out in your PDP;
- c) Send the NMC a report from your line manager, mentor or supervisor (or their nominated deputy) showing your progress towards achieving the aims set out in your PDP every six months and 28 days prior to any NMC review hearing.

5. You must 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.

6. 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.

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 period of this order is for two years.

The panel did note, however, that if you have evidence of how you have strengthened your practice, you can request an early review at which the conditions may be loosened, allowing you to apply for a place on a return to practice course. The panel recommend that you aim to demonstrate this as soon as possible.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 17 February 2023 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 you have 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:

- Your attendance, whether in person or via telephone;
- A written reflection from you using a recognised model (e.g GIBBS) addressing the concerns identified by the substantive panel, and the potential impact of your past actions on patients, the public and the nursing profession;
- Any evidence that you have kept up to date with relevant nursing knowledge, skills, or training (even if not working as a registered nurse), and;
- Testimonials from any employment, paid or unpaid, you undertake (even if not working as a registered nurse).

This will be confirmed to you in writing.

That concludes this determination.