

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

**Substantive Order Review Hearing
Monday, 19 June 2023**

Virtual Hearing

Name of registrant:	Jo Mullen
NMC PIN:	02F0413O
Part(s) of the register:	Registered Nurse - Sub Part 1 Adult Nursing - 17 June 2002
Relevant Location:	Hampshire
Type of case:	Misconduct
Panel members:	Geraldine O'Hare (Chair, Lay member) Nicola Strother Smith (Lay member) Richard Lyne (Registrant member)
Legal Assessor:	Ben Stephenson
Hearings Coordinator:	Margia Patwary
Nursing and Midwifery Council:	Represented by Arthur Lo, Case Presenter
Ms Mullen:	Not present and unrepresented at the hearing
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (9 months) to come into effect on 28 July 2023 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 Ms Mullen was not in attendance and that the Notice of Hearing had been sent to Ms Mullen's registered email address on 19 May 2023.

Further, the panel noted that the Notice of Hearing was also sent to Ms Mullen's representative at the Royal College of Nursing (RCN) on 19 May 2023.

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

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Ms Mullen 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 Ms Mullen

The panel next considered whether it should proceed in the absence of Ms Mullen. The panel had regard to Rule 21 and heard the submissions of Mr Lo who invited the panel to continue in the absence of Ms Mullen. He submitted that Ms Mullen had voluntarily absented herself.

Mr Lo referred the panel to the letter from Ms Mullen's representative from the RCN dated 14 June 2023 which stated:

'The Registrant will not be attending the hearing, nor will they be represented. No disrespect is intended by their non-attendance. The Registrant has received the notice of hearing and is happy for the hearing to proceed in their absence. She remains keen to engage with the proceedings.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Ms Mullen. In reaching this decision, the panel has considered the submissions of Mr Lo, the written representations from the RCN made on Ms Mullen's behalf, 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 Ms Mullen;
- Ms Mullen's representative has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her 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 Ms Mullen.

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 28 July 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of four months by a Fitness to Practise Committee panel on 25 February 2022. The last reviewing panel confirmed the conditions of practice order for a period of 12 months. The current order is due to expire at the end of 28 July 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:

'That you, a Registered Nurse:

1) On 8 August 2019 failed to take hourly observations of Patient A who had a recorded NEWS score of 6 at 13:15 hours;

2) On 8 August 2019 at around 15:15 hours altered observations on Patient A's notes which had been recorded by Colleague A:

a. Respiratory rates;

b. NEWS total from 6 to 4;

[...]

4) On 8 August 2019 you tried to pull the observation chart out of Colleague A's hands;

[...]

6) On 8 August 2019 asked Colleague A on one or more occasions not to raise a complaint about yourself;

[...]

8) Your actions in charge 6 showed a lack of integrity in that you put concern for yourself above the interests of a patient.

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

Charges 2a, 2b and 6 were found proved by your admission.'

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

'The panel noted that the original panel found that you had developing insight. At this hearing the panel determined that your insight has improved, but remains developing. The panel noted the reflective piece which you provided for this hearing, and considered that this does not fully address the issues of how your actions put the patient at a risk of harm, as identified by the original panel. The panel noted that you described your actions as an 'oversight', and considered that this demonstrates that you may not have fully appreciated the seriousness of your failings and the potential risks to patients of your actions. The panel therefore concluded that your reflective piece did not comprehensively address the issues identified by condition 3b) of the conditions of practice order, namely 'your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care'.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your reflective piece, which shows that you have undertaken relevant training courses on clinical observations for nurses and documentation and record keeping, since the substantive hearing. The panel had regard to Ms Dmitrev's submissions, and noted that you have not worked as a registered nurse since the conditions of practice order was imposed, although you

have been actively seeking employment, and wish to return to practice. In light of this, the panel determined that that the courses which you have undertaken go some way to assist you to strengthen your practice in respect of the charges found proved, however it concluded that you have not yet been able to demonstrate that you have embedded your learning into safe observed practice as a nurse.

The original panel determined that a risk remained that you were liable to repeat matters of the kind found proved. Today's panel has received no new information to demonstrate this risk of repetition has been diminished. In light of this, this panel determined that you are still 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 as a well-informed member of the public would expect the conditions of practice to continue to be in place until such time until you can demonstrate that your failings have been fully addressed.

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

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

'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 further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence, no deep seated attitudinal

problems and that the misconduct related to a single incident of poor judgement rather than concerns surrounding your clinical competence. It had regard to your long career without any other regulatory concerns. In this case, the panel considered that conditions 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 wholly disproportionate and would not be a reasonable response in the circumstances of your case because this would remove the opportunity for you to return to nursing and demonstrate safe practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 28 July 2022. The panel considered that this period will allow you sufficient time to seek employment and engage with the conditions of practice imposed, prior to any review of this order. The panel noted that, should you consider that you have complied with the order before the statutory review, it is open to you to request an early review of this order. 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 limit your nursing practice to a single employer. This may be permanent employment or through an agency.*
- 2. You must remain under the direct or indirect supervision of a Band 6 nurse or above any time you are working. Your supervision must consist of your supervisor reviewing a minimum of 10 patients’ observation charts each month, 50%*

of which should include NEWS scores.

3. You must develop a personal development plan (PDP) in relation to condition 2 above. The log must:

- a) Contain the dates that you carried out each set of observations and be signed by a supervisor on that shift to confirm the charts have been completed correctly and/or identify any errors.*
- b) You must write a reflective piece which demonstrates your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care. This should also contain further reflection of your understanding of the panel's findings and what steps you have taken to strengthen your practice.*

You must send your case officer a copy of the log prior to the next review hearing.

4. 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.*

5. 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.*

6. 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*

7. *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.*

8. *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 12 months.'

Decision and reasons on current impairment

The panel has considered carefully whether Ms Mullen'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, and the on-table bundle. It has taken account of the submissions made by Mr Lo on behalf of the NMC. Mr Lo provided the panel with the background facts of the case and directed the panel to the relevant pages in the NMC bundles.

Mr Lo outlined the background to the case, the charges found proved at the original substantive hearing, and the decision of previous reviewing panel. He also referred the panel to the previous panel's decision in relation to impairment and sanction at the original substantive hearing.

Mr Lo referred the panel to Ms Mullen's updated reflective statement, dated 3 June 2023.

Mr Lo submitted that in relation to insight, Ms Mullen remains impaired. He stated that Ms Mullen's reflection piece does not demonstrate any significant progress. He submitted whilst the reflective piece focuses on Ms Mullen's failure to keep accurate records, she does not seem to reflect on the facts that patients could have potentially been harmed by her actions. He further submitted there is no evidence of any relevant training undertaken since the current order was imposed.

Mr Lo submitted that Ms Mullen has not worked as a registered nurse since the incident, and it is unclear as to what extent her practice has been strengthened as her circumstances have not changed.

Mr Lo submitted that an order remains necessary on the grounds of public protection and is also necessary on the grounds of public interest. He further submitted the current conditions would be sufficient to protect the public and satisfy the wider public interest.

Mr Lo invited the panel to continue the current conditions of practice order on the grounds of public protection and the wider public interest.

The RCN, in its written submissions dated 14 June 2023, stated that:

...‘Since the imposition of the 12-month substantive conditions of practice order, the Registrant has not practised in a registered nursing post.

It is respectfully submitted that the level of risk originally assessed has not changed.

In the Registrant’s reflection, she has demonstrated her understanding of the applicable sections of the NMC Code of Conduct and the learning she has taken from it to address the regulatory concerns.

The Registrant’s updated reflection makes reference to the following sections of the Code:

Practice Effectively

- *Section 6.1 – Ensuring that any information or advice given is evidence-based including information relating to using any health and care products or services.*
- *Section 10 – Keep clear and accurate records relevant to your practice.*
- *Section 10.3 – Ensuring records are completed accurately and without any falsification and taking immediate and appropriate action if you become aware that someone has not kept to these requirements.*

Preserve Safety

- *Section 24.2 – Use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice.*

We invite the Panel to continue the current conditions of practice order in order to allow the Registrant to further improve her practice by seeking relevant training programmes and secure work in her relevant field.’...

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 Ms Mullen’s fitness to practise remains impaired.

The panel noted that the last panel found that Ms Mullen had developing insight. At this hearing the panel had concerns in relation to Ms Mullen’s insight and determined it remains developing. The panel particularly noted Ms Mullen’s updated reflective piece which she provided for this hearing stated:

...“Due to my transparency I maintain that I upheld my integrity throughout the experience.”...

The panel considered that Ms Mullen’s insight does not fully address the issues of how her actions put patients at a risk of harm, nor has she fully appreciated the seriousness of her failings and the potential risks of her actions. The panel therefore concluded that Ms Mullen’s reflective piece did not thoroughly address the issues identified by condition 3b) of the conditions of practice order, namely ‘your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care’.

In its consideration of whether Ms Mullen has taken steps to strengthen her practice, the panel noted that she has not undertaken relevant training courses or any recent clinical observations for nurses and documentation and record keeping, since the last review hearing.

The panel had regard to the RCN’s submissions and noted that Ms Mullen has not worked as a registered nurse since the conditions of practice order was imposed. However, the

panel has no indication to whether Ms Mullen has been seeking employment or if she wishes to return to practice. In light of this, the panel concluded that Ms Mullen has not yet been able to demonstrate that she can practice unrestricted and safely as a registered nurse.

The last panel determined that a risk remained that Ms Mullen was liable to repeat matters of the kind found proved. Today's panel has received no new information to demonstrate this risk of repetition has been diminished. In light of this, this panel determined that Ms Mullen is still 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.

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

Decision and reasons on sanction

Having found Ms Mullen'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 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 ongoing public protection issues identified, an order that does not restrict Ms Mullen's practice would not be appropriate in the circumstances because it would be insufficient to protect the public until she can demonstrate that the failings identified by these charges have been fully addressed and that she is in a position to return safely to unrestricted clinical practice.

The panel next considered whether imposing a further conditions of practice order on Ms Mullen'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 whether imposing a further conditions of practice order on Ms Mullen's registration would still be a sufficient and appropriate response. It noted that the NMC submitted that this would be the appropriate sanction, and that Ms Mullen would not oppose this, recognising that she has not yet been able to comply fully with the original conditions. 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 Ms Mullen has been unable to comply with conditions of practice due to her current

employment status, but she continues to engage with the NMC and is willing to comply with any conditions imposed.

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 Ms Mullen's case because this would remove the opportunity for her to return to nursing and demonstrate safe practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 9 months, which will come into effect on the expiry of the current order, namely at the end of 28 July 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 limit your nursing practice to a single employer. This may be permanent employment or through an agency.
2. You must remain under the direct or indirect supervision of a Band 6 nurse or above any time you are working. Your supervision must consist of your supervisor reviewing a minimum of 10 patients' observation charts each month, 50% of which should include NEWS scores.
3. You must develop a personal development plan (PDP) in relation to condition 2 above. The log must:
 - a) Contain the dates that you carried out each set of observations and be signed by a supervisor on that shift to confirm the charts have been completed correctly and/or identify any errors.

- b) You must write a reflective piece which demonstrates your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care. This should also contain further reflection of your understanding of the panel's findings and what steps you have taken to strengthen your practice.

You must send your case officer a copy of the log prior to the next review hearing.

- 4. You must keep the NMC informed about anywhere you are working by:
 - c) Telling your case officer within seven days of accepting or leaving any employment.
 - d) Giving your case officer your employer's contact details.
- 5. You must keep the NMC informed about anywhere you are studying by:
 - c) Telling your case officer within seven days of accepting any course of study.
 - d) Giving your case officer the name and contact details of the organisation offering that course of study.
- 6. You must immediately give a copy of these conditions to:
 - f) Any organisation or person you work for.
 - g) Any agency you apply to or are registered with for work.
 - h) Any employers you apply to for work (at the time of application).
 - i) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - j) 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

7. You must tell your case officer, within seven days of your becoming aware of:
 - d) Any clinical incident you are involved in.
 - e) Any investigation started against you.
 - f) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - d) Any current or future employer.
 - e) Any educational establishment.
 - f) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 9 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 28 July 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 Ms Mullen has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement with the NMC, including your attendance at any review of this order;
- Evidence of compliance with the conditions of practice order;
- Evidence of attempt to secure employment;
- Testimonials from any paid or unpaid employment; and
- If you have not secured employment before the next review of this order, evidence that you have kept up to date with your knowledge and developments in nursing practice.

This will be confirmed to Ms Mullen in writing.

That concludes this determination.