

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

**Substantive Order Review Hearing
Thursday 4 May 2023**

Virtual Hearing

Name of Registrant: Donna Antoinette Pickford

NMC PIN 89D0547E

Part(s) of the register: Registered Adult Nurse - Sub Part 1
RN1(May 1992)

Relevant Location: Blackpool

Type of case: Lack of competence

Panel members: Linda Owen (Chair, Lay member)
Jodie Jones (Registrant member)
Bryan Hume (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Christine Iraguha

Nursing and Midwifery Council: Represented by Rowena Wisniewska, Case Presenter

Mrs Pickford: Not present and unrepresented in absence

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of 19 June 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 Mrs Pickford was not in attendance and that the Notice of Hearing had been sent to Mrs Pickford's registered email address by secure email on 5 April 2023. Ms Wisniewska, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to a letter from the NMC Case Officer which confirmed the Notice of Hearing had been sent on the same date using the email address as shown on the NMC Register.

Ms Wisniewska 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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information regarding Mrs Pickford'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 Mrs Pickford has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34 of the Rules.

Decision and reasons on proceeding in the absence of Mrs Pickford

The panel next considered whether it should proceed in the absence of Mrs Pickford. The panel had regard to Rule 21 and heard the submissions of Ms Wisniewska who invited the panel to continue in the absence of Mrs Pickford. She submitted that the case involves public protection and public interest concerns, which are being addressed by the current order and is due to expire on 19 June 2023. She referred the panel to further attempts of correspondence made by the NMC Case Officer to contact Mrs Pickford in relation to this hearing, dated 11 April 2023, 2 May 2023, and 3 May 2023. Ms Wisniewska submitted that

there had been no engagement at all by Mrs Pickford with the NMC in relation to these proceedings and as a consequence, there was no reason to believe that an adjournment would secure her attendance.

The panel accepted the advice of the legal assessor and referred it to the case of *R v Jones and General Medical Council v Adeogba* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Mrs Pickford. In reaching this decision, the panel has considered the submissions of Ms Wisniewska, and the advice of the legal assessor. It has had particular regard to all 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 Mrs Pickford;
- Mrs Pickford has not engaged with the NMC and has not responded to any of the correspondence sent to her about this hearing or previous hearings;
- The current order is due to expire on 19 June 2023;
- 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 to proceed in the absence of Mrs Pickford.

Decision and reasons on review of the substantive order

The panel decided to impose a striking off order.

This order will come into effect at the end of 19 June 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 two years by a Fitness to Practise Committee panel on 21 May 2020. This was reviewed at a meeting on 10 May 2022 and was replaced with a suspension order for a period of 12 months.

The current order is due to expire at the end of 19 June 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, between 20 October 2015 and 20 October 2018 failed to demonstrate the standard of knowledge, skill and judgement required to practice without supervision as a band 5 nurse in that you:

- 1) *On 20 October 2015 administered Tazocin to patient A on 2 occasions when patient A was allergic to Tazocin.*
- 2) *On 01 May 2016 failed to administer a Fentanyl patch to patient VJ when patient VJ was prescribed a Fentanyl patch.*
- 3) *On 01 May 2016 failed to administer Paracetamol to patient VJ when patient VJ was prescribed paracetamol, alternatively;*
- 4) *...*
- 5) *On 01 May 2016 failed to record and sign for the completion of a blood transfusion given to patient VJ*
- 6) *On 15 June 2016 failed to administer Dexamethosane to patient AH when patient AH was prescribed Dexamethosane, alternatively;*
- 7) *...*
- 8) *On 23 April 2017 failed to administer:*
 - a. *Amoxicillin*
 - b. *Gentamicin*
 - c. *Metronidazole*

To patient SE when patient SE was prescribed those medications.

9) *On 23 April 2017, having administered Pheytoin to patient SE failed to record the administration on patient SE's medication administration record.*

10) *On 07 June 2017 whilst undertaking a supervised medication administration round, failed to check the allergy status of each patient.*

11) *On 02 July 2018 failed to administer a Hyoscine patch to patient BF when patient BF was prescribed a Hyoscine patch.*

12) *On 02 July 2018 having administered Levothyroxine to patient BF, failed to record the administration on patient BF's medication administration record.*

13) *On 08 July 2018 failed to administer Warfarin to patient PM when patient PM was prescribed Warfarin, alternatively;*

14) ...

15) *On 19 October 2018 administered a Fentanyl patch to patient MT when the prescriber had not signed Patient MT's medication administration record confirming the prescription of a Fentanyl patch to patient MT.*

16) *On 20 October 2018 administered intravenous Pabrinex to patient AL when patient AL was not prescribed intravenous Pabrinex.*

17) *On 20 October 2018 having administered:*

a. St. Marks solution

b. Ensure Compact

To patient AB, failed to record the administration on patient AB's medication administration record.

18)...

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

The first panel determined the following with regard to impairment:

'The panel considered that there was no new information before it, and therefore there had been no real material change of circumstances since the previous hearing. The panel noted that the previous panel, in its determination on 21 May 2022, had provided Mrs Pickford with an opportunity to engage with these proceedings, and it had been very clear as to what this panel would be assisted by, in order for Mrs Pickford to demonstrate evidence of insight and strengthened practice. Despite being given such clear information by the previous panel, Mrs Pickford had not meaningfully engaged with these proceedings, and she had not taken up that opportunity. The panel considered that Mrs Pickford had not provided any of the evidence suggested by the previous panel.

The panel therefore considered that there was no information before it to demonstrate that Mrs Pickford had addressed her clinical failings and that she had remediated her lack of competence. The panel also considered that there was no evidence to show the development of any insight on Mrs Pickford's part. The panel had nothing before it to provide reassurance that Mrs Pickford would not repeat her clinical failings in the future. The panel therefore considered that there is a high risk of repetition, and that patients would be placed at a real risk of harm if Mrs Pickford were able to practise without restriction. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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 had regard to Mrs Pickford's lack of meaningful engagement with these proceedings, despite being given further time by the previous panel to engage,

and with clear directions as to how she could provide this panel with evidence to demonstrate remediation and insight. The panel considered that Mrs Pickford had a duty to engage with these proceedings and cooperate with the NMC as her regulator, and she had failed to do. The panel therefore determined that a finding of impairment also remains necessary on public interest grounds, in order to maintain confidence in the nursing profession and in the NMC as a regulator.

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

The first panel determined the following with regard to sanction:

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

The panel next considered the continuation of the current conditions of practice order. The panel noted Mrs Pickford's lack of meaningful engagement with these proceedings. It considered that there was no evidence to suggest that Mrs Pickford would be willing or able to comply with a conditions of practice order. The panel determined that it would not be possible to formulate workable or practicable conditions, which would suitably protect the public and satisfy the public interest. On this basis, the panel concluded that a conditions of practice order is no longer practicable in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months which would provide Mrs Pickford with an opportunity to engage with the NMC and to provide evidence of her strengthened practice.

It considered this to be the most appropriate and proportionate sanction available.'

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Pickford'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 the documentation before it, including the NMC bundle, which included the decision of the substantive panel, the last review panel, and several items of correspondence to Mrs Pickford from the NMC case officer in relation to this hearing. It has taken account of the submissions made by Ms Wisniewska on behalf of the NMC.

Ms Wisniewska said that this is the second mandatory review of a suspension order in respect of Mrs Pickford under Article 31 of the Nursing and Midwifery Order 2001 which expires on 19 June 2023. She outlined the background of the case to the panel, along with the relevant documents, decisions of the previous panel, and the charges proved. She submitted that the key issue for the panel today is to decide whether Mrs Pickford remains impaired and referred it to the case of *Abrahaem v GMC* [2008] EWHC 183 (Admin). She reminded the panel of its role in reviewing the order today and submitted that Mrs Pickford remains impaired as there is no evidence of remediation, reflection, training, or engagement with the NMC. She said that Mrs Pickford was informed by the last panel what a future reviewing panel would be assisted by when considering whether the concerns raised have been addressed. However, she submitted that there is no new material before this panel since Mrs Pickford has not engaged with the NMC and has failed to provide those documents. She stated that Mrs Pickford has not corresponded regarding the hearing today or provided the information that would assist the panel, as directed by the previous panel.

Although, these matters relate to Mrs Pickford's health and competence, and has been subject to conditions of practice and suspension order for more than two years. Ms Wisniewska submitted that it is therefore open to the panel to consider a striking off order given the lack of engagement. She referred the panel to the case of *CHRE v NMC & Grant* [2011] EWHC 927.

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 Mrs Pickford's fitness to practise remains impaired.

The panel considered the lack of competence found proven was serious but remediable. It noted that Mrs Pickford has not engaged with the NMC for more than two years.

The panel noted that the last reviewing panel found that there was no evidence to demonstrate any insight from Mrs Pickford. At this hearing the panel had no information or evidence before it to demonstrate any insight from Mrs Pickford into her failings as there had been no communication over the length of the NMC process.

In its consideration of whether Mrs Pickford has taken steps to strengthen her practice, the panel noted that there has been no engagement at all from Mrs Pickford in regard to the concerns raised and therefore no evidence to demonstrate that she has strengthened her practice. The panel noted that it had no evidence before it that Mrs Pickford has undertaken any training to remedy the failings identified at the substantive hearing, or evidence to show how she has kept up to date with her nursing practice since the substantive hearing. The panel also noted that there is no evidence that Mrs Pickford has worked as a nurse or is in any form of employment within the healthcare sector. The panel therefore found that, although remediable, Mrs Pickford had not remedied the failings, and as such there remains a risk of repetition, and a risk of harm.

The panel determined that there was no material change in the circumstances of this case since the last hearing and in the level of risk previously identified. In light of this, this panel determined that Mrs Pickford remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

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

Decision and reasons on sanction

Having found Mrs Pickford'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 seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Pickford's practice would not be appropriate in the circumstances. The panel considered that Mrs Pickford's 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 a conditions of practice order on Mrs Pickford'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 bore in mind the seriousness of the facts found proved at the original meeting. The panel noted that Mrs Pickford has not engaged with the NMC process, has been subject to an NMC conditions of practice order for a period of two years, but has not engaged with them to improve her practice. The panel also noted there is no evidence that she is in employment or that she could successfully engage and comply with conditions of practice, as the panel had no information that her knowledge or skills are up to date. The panel therefore determined that placing conditions on Mrs Pickford's registration would not protect the public and address the wider public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Pickford's lack of competence given her disengagement.

The panel next considered imposing a further suspension order. The panel noted that the last reviewing panel imposed a 12-month period of suspension on Mrs Pickford's registration. In that period, she provided no evidence of remorse or insight into the failings identified. The panel was of the view that considerable evidence would be required to show that Mrs Pickford no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel noted the lack of competence was capable of remediation and previous panels had suggested means by which Mrs Pickford could have done so. However, Mrs Pickford had not provided any of the information that the previous reviewing panels suggested. The panel also considered that the last review panel had made it clear that a striking off order would be a sanction available to any future reviewing panel. The panel noted Mrs Pickford's disengagement with the NMC and determined that the public interest will be best served by not prolonging proceedings any longer than necessary and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order. It also concluded that public confidence in the profession could not be maintained if Mrs Pickford were to remain on the register.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 19 June 2023 in accordance with Article 30(1).

This decision will be confirmed to Mrs Pickford in writing.

That concludes this determination.