

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

**Substantive Order Review Hearing
Tuesday 7 November 2023 – Wednesday 8 November 2023**

Virtual Hearing

Name of registrant:	Dianne Stephenson
NMC PIN:	1111165S
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – 8 September 2014
Relevant Location:	Aberdeen
Type of case:	Lack of Competence
Panel members:	Sarah Lowe (Chair, Lay member) Amanda Revill (Registrant member) Catherine Devonport (Registrant member)
Legal Assessor:	Nigel Mitchell
Hearings Coordinator:	Monsur Ali
Nursing and Midwifery Council:	Represented by Sophia Ewulo, Case Presenter
Miss Stephenson:	Present but not represented at the hearing
Order being reviewed:	Conditions of Practice Order (3 Years)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (2 years)

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

Ms Ewulo made an application that parts of this case may need to be held in private on the basis that proper exploration of your case may involve reference to your health and matters relating to personal circumstances. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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 decided to hold parts of the hearing which refer to your health and matters relating to your personal circumstances in private because it concluded that this was justified by the need to protect your privacy and that this outweighed any prejudice to the public interest in holding those parts of the hearing in public. However, where there is no reference to matters relating to your health or personal circumstances, the hearing would be held in public.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a further period of two years.

This order will come into effect at the end of 10 November 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of three years by a Fitness to Practise Committee panel on 12 October 2020.

The current order is due to expire at the end of 10 November 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, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a Scrub Nurse / ~~registered nurse~~ in that:

While subject to a Stage 1 Formal Capability Process at Aberdeen Royal Infirmary you failed to complete the following actions / competencies on your Performance Improvement Action Plan:

- 1) Complete all scrub competencies on completion of the action plan;*
- 2) Complete all circulating competencies on completion of the action plan;*
- 3) Demonstrating that you are aware of the appropriate time to complete a surgical count of instruments in accordance with the swab, needle instrument policy;*
- 4) Competently ~~performing~~ performing the role of Scrub Nurse without the support of a trained nurse acting as your circulating nurse;*
- 5) Communicating appropriately to floor staff;*
- 6) Demonstrate an understanding of different sutures and to give examples of when they could be utilised;*
- 7) ...*
- 8) The concerns at any or all of areas referred to charges 1- 7 above is demonstrated by, but not limited to, those matters set out in 'Schedule A'*

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

<u>SCHEDULE A</u>		
<i>i</i>	<i>05/04/2018</i>	<i>Your lack of understanding relating to an insufflator machine during an observation scenario relating to scrubbed setting up for a Laparoscopic Cholecystectomy</i>
<i>j</i>	<i>05/04/2018</i>	<i>Your lack of understanding relating to blade sizes during an observation scenario relating to scrubbed setting up for a Laparoscopic Cholecystectomy</i>
<i>l</i>		<i>Your lack of understanding relating to sutures for a Laparoscopic procedure relating to scrubbed setting up for a Laparoscopic Cholecystectomy</i>
<i>o</i>	<i>19/04/2018</i>	<i>You not looking at the screen when the surgeon when putting the laproscopic ports relating to a Laparoscopic Cholestectomy</i>
<i>p</i>	<i>19/04/2018</i>	<i>You not anticipating the needs of the surgeon and /or potential hazards relating to a Laparoscopic Cholestectomy</i>
<i>s</i>	<i>19/04/2018</i>	<i>Your lack of knowledge in relation to sutures'</i>

The original panel determined the following with regard to impairment:

'The panel considered that the facts found proved demonstrated deficiencies in basic nursing competencies. The panel considered that these were basic fundamental tenets of the nursing profession and that although the competencies related to your role as a scrub and circulating nurse, certain elements such as communication with colleagues, would be required in all aspects of nursing.

The panel was mindful that the issue it had to determine was that of current impairment as of today. It therefore had to consider whether you are liable in future to act in such a way as to put patients at unwarranted risk of harm and/or breach fundamental tenets. The decision about the risk of repetition in this case would be informed by consideration of the level of insight you have demonstrated and by

whether your lack of competence is capable of being remedied and, if so, whether it has been remedied.

Regarding insight, the panel considered that you have demonstrated some insight as you accepted that you lack competence in certain areas. The panel noted that you have attempted to engage in a RTP course and have not been able to secure a place. However the panel considered that there are other opportunities and avenues that exist in which you are able to engage to demonstrate that you have remediated the concerns in your level of competence. The panel also considered that throughout the proceedings you attempted to allocate blame to your colleagues, to the NMC and to other third parties without accepting responsibility for the concerns in relation to your practice. The panel therefore considered that, whilst you have demonstrated some insight, your insight is still, at this time, developing.

The panel considered whether the three questions in Cohen; whether it could be satisfied that your lack of competence as a band 5 nurse is capable of being remedied, whether it in fact had been remedied and whether it is highly unlikely that your previous lack of competence would be repeated.

The panel is of the view that your level of competence is potentially capable of being remedied, but that it has not been so far. The panel noted that you went through a significant period where you were heavily supported in your role but you failed to successfully complete a Stage 1 Formal Capability Process which was implemented to improve your practice. Further the panel has no evidence of any continued professional development you have undertaken in the form of online or distance learning courses, your attendance at conferences or any reflections on relevant articles. The panel therefore concluded that you have yet to remediate your lack of competence.

The panel is of the view that there is a high risk of repetition based on your limited, albeit developing, insight and lack of remediation, especially given you have not practiced as a registered nurse since April 2018. 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel was of the view that the public would rightly expect a registered nurse to be competent in basic nursing skills and knowledge. The panel determined that, in this case, a finding of impairment on public interest grounds was required.

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

The original panel determined the following with regard to sanction:

'Having found your 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 Sanction Guidance (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:

- *You sought to blame others for your imposition and took no responsibility for your failings;*
- *Lack of full insight;*
- *Little remediation has taken place; and*
- *Should the matters found proved be repeated there is a potential risk of harm to patients.*

The panel also took into account the following mitigating features:

- *You have engaged throughout the NMC process; and*
- *You have shown some insight into the matters found proved.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the wide ranging lack of competence in this 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 your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where ‘there is no risk to the public or to patients requiring the nurse or midwife’s practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise’. 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 placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- Identifiable areas of the nurse or midwife’s practice in need of assessment and/or retraining;*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel considered that the lack of competency demonstrated was specific to the role of a scrub nurse, and noted that most of the charges found proved are focused in this specific area. The panel took into account that you never intend to work as a scrub nurse again. However, the panel was of the view that beneath this it could

identify fundamental issues in your general nursing practice which includes working within a team, communication, learning and adapting and focusing on important matters.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted above. The panel accepted that you would be willing to comply with conditions of practice.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order today would be disproportionate, punitive and would not be a reasonable response in the circumstances of your case.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will uphold the standards of practice required of a registered nurse.

The panel determined that the following conditions 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 ensure that you are supervised by a band 6 nurse any time you are working. Your supervision must consist of:*
 - Working at all times while being directly observed by a registered nurse of band 6 or above.*

2. *You must work with your mentor, line manager, supervisor or their nominated deputy to create a personal development plan (PDP). Your PDP must address the concerns about:*
 - a) *Team working*
 - b) *Communication skills*
 - c) *Clinical competencies relevant to the role you are working in*

You must:

 - a) *Send your case officer a copy of your PDP within 6 weeks starting work as a registered nurse.*
 - b) *Meet with your mentor, line manager, supervisor or their nominated deputy at least every fortnight to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a report from your mentor, line manager, supervisor or their nominated deputy every 3 months. This report must show your progress towards achieving the aims set out in your PDP.*
3. *You must keep us informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
4. *You must keep us informed about anywhere you are studying by:*
 - a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
5. *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.*
6. *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.*
7. *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 three years. The panel noted your stated career intentions and concluded that a time frame of three years would allow you to gain employment, considering the Covid-19 pandemic and the delays this could cause, and would also allow for some time to implement and comply with the conditions imposed.'

Decision and reasons on current impairment

The 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 which contained 321 pages you yourself had provided. You also provided the panel with a witness statement dated 15 July 2019 you had given to the NMC in relation to two occasions... [PRIVATE]. The panel also had regard to your oral evidence under affirmation.

The panel has taken account of the submissions made by Ms Ewulo on behalf of the NMC. Ms Ewulo provided the panel with the summary of the case and reminded it of the decision of the previous panel. She submitted that there is insufficient evidence before this panel to demonstrate that you had addressed the regulatory concerns or taken sufficient steps to strengthen your practice since the imposition of the order. She submitted that whilst you have found employment this year as a support worker, you have not worked as a registered nurse since the imposition of the order and have been out of practice since 2018. She submitted that you therefore have not had the opportunity to demonstrate that you are safe to practice as a registered nurse and the risk of repetition remains.

Ms Ewulo submitted that you have made some progress since October 2020 but it is difficult to say that there has been significant progress. When giving evidence you indicated that you intend to complete a Return to Nursing course but as of yet, you are still to apply for and secure a place on the course. Ms Ewulo submitted that your lack of competence covers fundamental areas of the nursing practice and was not confined to your role as a Scrub Nurse. She submitted that you have not yet remediated your lack of competence.

Ms Ewulo acknowledged that you have completed various online training courses and this shows that you are heading in the right direction. However, these training courses do not address the concerns found proved. She noted that the majority of the training was done online. She said that the training you have completed are mainly suitable for a Band 2 role although some of the training does overlap into a Band 5 role.

Ms Ewulo reminded this panel that a wide range of concerns were identified by the previous panel: lack of knowledge of equipment; lack of organisation; lack of knowledge of procedures; lack of observation of procedures; and issues with communication. Ms Ewulo

submitted that a lack of competence in these areas have the potential to cause serious harm to the public.

Ms Ewulo stated that whilst there has been some progress and that you have gained employment in the community as a support worker, more needs to be done to establish remediation. She submitted that in the absence of full remediation, there remains a real risk of repetition and a risk of harm to the public should you be permitted to practice without restrictions. Ms Ewulo therefore invited the panel to find current impairment on the grounds of public protection and also otherwise in the wider public interest. She submitted that an informed member of the public would be concerned to know that a nurse who was deemed to lack competence in fundamental areas of nursing is permitted to practise without restriction.

Ms Ewulo invited the panel to consider the NMC Guidance on sanction. She said that a no further action or a caution order would not protect the public or address the wider public interest. Ms Ewulo submitted that in the circumstances of the case, the panel may conclude that an order preventing you from unrestricted practice is necessary on the grounds of public protection and otherwise in the wider public interest to protect the reputation of the profession, and to declare and uphold proper standards of conduct within the profession.

You gave evidence under affirmation. You told the panel that you completed your nursing training in 2014 and had worked in different areas in the UK. You worked as a Staff Nurse at NHS Grampian Maternity Hospital (the Hospital) between February 2016 and April 2017. You then interviewed for a position as a theatre nurse and commenced work as an anaesthetic nurse at NHS Grampian Short Stay Unit at Aberdeen Royal Infirmary in April 2017. Shortly thereafter, within your role as a theatre nurse you were moved from an anaesthetic nurse role to a Scrub Nurse role. You were then primarily employed in a Scrub Nurse role at the Hospital but you did not want to do this role and that this was not something you were happy about. You told the panel that you were forcing yourself to do this role.

[PRIVATE]

[PRIVATE]

[PRIVATE].

You submitted that you are now in a much better position, have been working in the community for a while and have every intention to return to nursing. You stated that you will return to nursing in a graduated manner, and that you have completed many online courses to prepare you for a Band 2 hospital role which is what you would like to do next.

You told the panel that you are now doing a degree in chemistry, and you intend to complete a Return to Practice course in the next intake in September 2024. You said that you would integrate these into a PhD programme that you intend to undertake. Upon questioning from Ms Ewulo about what you would do differently should you face a similar situation, you stated that you should not have taken the role of Scrub Nurse in the first place. You said that had you done that, you could have avoided all the issues. When you were asked about how the charges proved would have impacted on patients, you stated that it meant that you were not competent and so were not safe to practice.

You explained to the panel that your current role in the community entails significantly different duties than that of a Band 5 nurse working in a hospital. You said that working as a Band 5 nurse is much more demanding, faster paced, many more patients to deal with and a wide variety of people to work with. You also articulated the difficulties you may encounter in a Band 5 role. You said that you understand that a nurse could get deskilled very quickly and therefore, you will do all the necessary training and additional courses to ensure that you are safe to practice.

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 first considered whether your fitness to practise remains impaired by reason of your lack of competence.

The panel noted that you have been working in the community and have made some positive steps to undertake Band 2 appropriate training but yet, the training undertaken does not address the regulatory concerns found proved. The panel considered your evidence and noted that you continue to have a degree of insight into your lack of competence but this is not fully developed. You are eager to return to nursing which is encouraging.

Nevertheless, the panel noted that you have not practised as a registered nurse since 2018, have not yet had the opportunity to comply with the conditions of practice order and therefore have not demonstrated that you are safe to practise. Therefore, the panel determined that you have not addressed the regulatory concerns found proved and are yet to develop sufficient insight into your failures. The panel concluded that the regulatory concerns against you are serious and wide ranging. In these circumstances, there is a risk of repetition and real risk of harm to the public, should you be permitted to return to practise without restriction.

In light of this, the panel determined that you remain liable to repeat matters of the kind found proved, and it therefore decided that a finding of current 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, a finding of current impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains currently 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 in the absence of sufficient evidence to demonstrate you have remedied the concerns found proved or taken steps to strengthen your practice. The panel decided that it would be neither be proportionate nor in the public interest to take no further action.

The panel 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 the lack of competence identified was not at the lower end of the spectrum and that a caution order would be inappropriate. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether extending the 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 could address the failings highlighted in this case. The panel was of the view that a conditions of practice order is sufficient to protect patients and the wider public interest.

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 because the charges found proved are remediable through re-training and fully developed insight.

Accordingly, the panel determined, pursuant to Article 30(1) (a) to extend the period for which the current order has effect, for a period of two years to grant you sufficient time to secure a place on a Return to Practise course and thereafter demonstrate that you are safe to practise as a registered nurse. The panel was satisfied that a conditions of practice order is an appropriate and proportionate sanction and that the existing conditions are measurable, workable, enforceable and realistic and provide the necessary protection for the public.

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must ensure that you are supervised by a Band 6 nurse any time you are working. Your supervision must consist of:
 - Working at all times while being directly observed by a registered nurse of Band 6 or above.

2. You must work with your mentor, line manager, supervisor or their nominated deputy to create a personal development plan (PDP). Your PDP must address the concerns about:
 - a. Team working
 - b. Communication skills
 - c. Clinical competencies relevant to the role you are working in.You must:
 - d. Send your case officer a copy of your PDP within 6 weeks starting work as a registered nurse.
 - e. Meet with your mentor, line manager, supervisor or their nominated deputy at least every fortnight to discuss your progress towards achieving the aims set out in your PDP.
 - f. Send your case officer a report from your mentor, line manager, supervisor or their nominated deputy every 3 months. This report must show your progress towards achieving the aims set out in your PDP.

3. You must keep us informed about anywhere you are working by:
 - a. Telling your case officer within seven days of accepting or leaving any employment.
 - b. Giving your case officer your employer's contact details.

4. You must keep us informed about anywhere you are studying by:
 - a. Telling your case officer within seven days of accepting any course of study.
 - b. Giving your case officer the name and contact details of the organisation offering that course of study.

5. 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.

6. 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.

7. 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 for the reasons set out above.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely at the end of 10 November 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:

- A reflective piece which fully addresses your lack of competence identified;
- Your continued engagement with the NMC, including your attendance at the next review of this order;
- Testimonials from any caring role, paid or unpaid, which you may have undertaken; and
- Records of any training undertaken to address the regulatory concerns.

This decision will be confirmed to you in writing.

That concludes this determination.