

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

**Substantive Order Review Hearing  
Friday, 20 October 2023**

Virtual Hearing

**Name of Registrant:** Elaine Brealey

**NMC PIN** 90E0773E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Learning Disabilities nursing – December 1993

**Relevant Location:** Barnsley

**Type of case:** Misconduct

**Panel members:** Rachel Forster (Chair, lay member)  
Roselyn Mloyi (Registrant member)  
Robert Fish (Lay member)

**Legal Assessor:** Michael Levy

**Hearings Coordinator:** Maya Khan

**Nursing and Midwifery Council:** Represented by Ed Carey, Case Presenter

**Mrs Brealey:** Present and represented by Wafa Shah instructed by the Royal College of Nursing (RCN)

**Order being reviewed:** Suspension order (6 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order replaced with conditions of practice order (12 months)**

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

At the outset of the hearing, Ms Shah, on your behalf, made a request that parts of this case be held in private on the basis that proper exploration of your case involves reference to matters relating to your 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).

Mr Carey, on behalf of the Nursing and Midwifery Council (NMC) 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.

Having heard that there will be reference to your personal circumstances, which are inextricably linked to the case, the panel determined to hold those parts of the hearing in private.

## **Decision and reasons on review of the current order**

The panel decided to replace the suspension order with a conditions of practice order for a period of 12 months. This order will come into effect immediately in accordance with Article 30(2) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is an early review at your request. This is the second review of a substantive order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 13 July 2022. The first review took place at a substantive order review meeting on 26 June 2023 where the panel decided to replace the conditions of practice order with a suspension order for a period of six months.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

*'That you, a registered nurse:*

1. *In respect of care provided to Patient A on or around 23 October 2020:*
  - a. *Did not personally ascertain Patient A's ability to consent to a HIV test prior to administering a test [PROVED BY ADMISSION]*
  - b. *Allowed a support worker to assess Patient A's capacity [PROVED BY ADMISSION]*
  - c. *Did not complete the capacity assessment forms [PROVED BY ADMISSION]*
  - d. *Did not discuss and / or inform the multi-disciplinary team and or responsible clinicians of:*
    - i. *Patient A's wish for a HIV test [PROVED BY ADMISSION]*
    - ii. *your intention to seek a HIV test [PROVED BY ADMISSION]*
  - e. *Did not provide adequate support for Patient A before and / or after the HIV test [PROVED BY ADMISSION]*
  - f. *Used and / or allowed an unauthorised HIV test [PROVED BY ADMISSION]*
  
2. *Failed to keep clear and accurate records relating to the HIV test in that you:*
  - a. *Did not record Patient A's wish for a HIV test [PROVED BY ADMISSION]*
  - b. *Did not record discussions with Patient A regarding the HIV test [PROVED BY ADMISSION]*
  - c. *The administration of the HIV test in Patient A notes [PROVED BY ADMISSION]*
  - d. *The proposed support plan in the event of a positive test [PROVED BY ADMISSION]*

The previous reviewing panel determined the following with regards to impairment:

*'The panel noted that the original panel found that Mrs Brealey had some insight by making full admissions. At today's meeting the panel determined that Mrs Brealey has shown no further insight into the concerns raised against her or demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession or how it had impacted the patient.*

*In its consideration of whether Mrs Brealey has taken steps to strengthen her practice, the panel took into account the only new information it has before it in the form of a brief written update by her manager sent on 15 Nov 2022, which states she is undertaking supervision and quarterly updates; no further information is provided. No evidence, required by her conditions of practice has been submitted by the registrant to the NMC. This should include how the conditions of practice has been adhered to and should include areas of personal development, training and reflection and learning outcomes. Additionally, the NMC should have been informed of any employment changes or periods of study.*

*The original panel determined that Mrs Brealey was liable to repeat matters of the kind found proved. Today's panel has received no new information to suggest that the risk of repetition has lessened. In light of this the panel determined that Mrs Brealey is 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 Brealey's fitness to practise remains impaired.'*

The previous reviewing panel determined the following with regards to sanction:

*'The panel next considered whether imposing a conditions of practice order on Mrs Brealey'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 determined that Mrs Brealey has not sufficiently engaged with the NMC since the imposition of the conditions of practice order and there is no information before it to conclude that Mrs Brealey has complied to date or is willing to comply with any conditions imposed upon her practice.*

*On this basis, the panel concluded that a conditions of practice order is no longer the appropriate order 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 six months would provide Mrs Brealey with an opportunity to engage with the NMC and provide evidence of compliance with previous conditions of practice order. It considered this to be the most appropriate and proportionate sanction available.*

*This conditions of practice order will take effect upon the expiry of the current suspension order, namely the end of 10 August 2023 in accordance with Article 30(1).*

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

## **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 and the written positive references and testimonials you provided to the panel today. It has also taken account of the submissions made by Mr Carey and Ms Shah.

Ms Shah informed the panel that this is an early review requested by you. She told the panel that you were originally made subject to a conditions of practice order and at the mandatory review of that order, you were not in attendance nor represented, and the panel substituted the conditions of practice for a suspension order.

Ms Shah submitted that her intention today is to persuade the panel to return to the position as it was prior to that review and to continue the conditions that were originally imposed.

Ms Shah provided the panel with reasons and context for your non-attendance at the last review hearing. [PRIVATE].

Ms Shah said that you provided all this information to your case officer at the RCN on 12 July 2023 via email and asked for advice. However, it subsequently came to light that your case officer had abruptly left the RCN and as there was not a bounce back email in place, the information you sent did not reach the appropriate case officer. The email was not forwarded to another staff member and your replacement case officer

was on long-term sick leave. Ms Shah said that your apparent failure to engage on the previous occasion was no fault of your own but arose from miscommunication between you and the RCN.

[PRIVATE].

Ms Shah invited the panel to consider the written positive references from your manager, the CEO of the hospital where you currently work and two other testimonials before it today. She referred the panel to the positive reference from your manager, a registered nurse, which reads as follows:

*'I have worked with Elaine as a colleague and as her manager for over 17 months, she has always shown compassion and high levels of commitment to her work. Her professionalism glows and she is a very much liked individual by both patients and other staff. She shows confidence and competence when taking on the leadership role as unit co-ordinator which she always managed extremely well and always using the firm but fair approach. Elaine always shows confidence with problem solving and managing difficult situations whilst helping and supporting others she remains calm and patient. Elaines colleagues feel confidence in seeking advice and support from her, whilst learning and building their own confidence and self-esteem. I have witnessed Elaine to be professional and is always accountable for her actions. She is compassionate about her work and ensures she promotes health and wellbeing to all patients in her care and focusses on preventing ill health. Elaine provides appropriate and safe care to patients, evaluating accordingly to ensure adequate, safe and effective patient care. Elaine shows confidence and competence with co-ordinating care and has great communication skills with patients as well as members of the MDT. Elaine has always been very keen to participate in all aspects of nursing care and is eager to learn always going above and beyond to meet the needs of the patients.*

*Throughout regular supervisions with Elaine despite personal circumstances and the need to increase hours and added stresses, this never impacted on the level of care Elaine delivered to her patients.'*

Ms Shah submitted that you fully acknowledge your failure to fully comply with the previous conditions of practice order.

In relation to Condition 1 which read as follows:

1. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan which includes the following:*

- *Six examples of where you have documented clinical incidents which you have had to think about what you needed to do, the approach you took and the outcome.*

Ms Shah submitted that you have not been able to fulfil this due to the extremely difficult personal circumstances you were facing.

In relation to Condition 2 which read as follows:

2) *You must undertake an in person and/or online training around consent and record-keeping.*

Ms Shah submitted that you have not undertaken in-person or online training around consent and record keeping over and above the mandatory training that you were required to do within your workplace.

In relation to Condition 3 which read as follows:

3) *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least once every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*

Ms Shah submitted that you have complied with this condition however you did not forward this information to the NMC. She said that you sent your information to the RCN but due to the miscommunications, it was never forwarded to the NMC. Ms Shah referred the panel to another email from your manager dated 20 October 2023 which read as follows:



*'When Elaine was subject to NMC conditions I was her manager, I was aware of her conditions and we completed her supervisions and I can confirm to the best of my knowledge she was complying with her conditions.'*

In relation to Condition 4 which read as follows:

- 4) *You must forward to the NMC a copy of your personal development plan within two weeks of it being agreed.*

Ms Shah submitted that you have not been able to fulfil this due to the extremely difficult personal circumstances you were facing.

In relation to Condition 5 which read as follows:

- 5) *You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC every three months and at least 14 days before any NMC review hearing or meeting.*

Ms Shah submitted that you have not been able to fulfil this due to the extremely difficult personal circumstances you were facing.

Ms Shah submitted that you wish to apologise to the NMC for not fulfilling the conditions of practice order and this was due to you *'not being in the right headspace'*. She submitted that you accept that it is your responsibility to send information into the NMC. She told the panel that there is no reflective piece or training for record keeping or consent. However, you have now obtained an online training account and intend to comply with that condition as soon as possible.

Ms Shah referred the panel to the positive testimonials which attest to your compassion and high level of commitment to your work as well as the fact that your workplace is aware of the restrictions on your practice and the difficult personal circumstances that you have been facing.

Ms Shah invited the panel to take into account that your failures have occurred as a result of your exceptional circumstances causing you to be unable to deal with matters in your professional life. She submitted that despite your failure to fully comply with your conditions, you did not put any patients at risk of harm because you informed your employer of your conditions.

Ms Shah submitted that the previous conditions of practice order would appropriately protect the public. She recommended one further condition of limiting your practice to your current employer as this would ensure that you are working within a supportive flexible environment. She submitted that a period of six -12 months would be sufficient time for you to comply fully with any conditions the panel may consider imposing.

Ms Shah also told the panel that you will be able to provide the NMC with your reflection, personal development plan (PDP) and evidence of online training undertaken within the next few weeks.

Mr Carey outlined the background of the case and went through the charges found proved by full admission at the original substantive meeting on 13 July 2022.

Mr Carey submitted that the NMC's position is neutral with regard to the order to be imposed. He recognised that there were significant mitigating circumstances due to your personal situation and he also recognised the failings of the RCN.

Mr Carey submitted that the documentary evidence before the panel today is positive. However, he submitted that that it does not directly relate to the three identified areas of concern and therefore the panel may find your fitness to practise remains impaired. He further submitted that the failings only related to a single concern involving one patient where no harm was caused and where you had made full admission.

Mr Carey acknowledged that you have complied with having monthly meetings with your line manager and that during Ms Shah's submissions she assured the panel that the NMC would receive information from you regarding your completed training in a matter of two or three weeks.

Mr Carey submitted that the panel may find that your level of engagement is much better than it was in June 2023, you are in an advantageous position as you have a

supportive employer in place, and you have provided explanations and context to the panel today. He however also submitted that the panel may consider the request to revert to conditions of practice as premature at this time as the relevant documents set out by the previous reviewing panel in June 2023 had still not been made available.

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 your fitness to practise remains impaired.

The panel noted that there are serious concerns identified in your case relating to basic skills of nursing including record keeping and capacity to consent. It took into account your exceptional mitigating circumstances as to why you have been unable to fully engage with the conditions of practice order. The panel was mindful that it had no documentary evidence before it today demonstrating that you have addressed the deficiencies in your nursing practice and are now capable of safe and effective practice. The panel considered that you remain liable to put patients at risk of harm and that a risk of repetition was possible. In these circumstances, the panel determined that a finding of impairment remained 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 practice. 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 your fitness to practise remains impaired.

### **Decision and reasons on sanction**

Having found that your fitness to practise is 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 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 misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. Notwithstanding your personal difficulties, the panel noted that you have not provided any of the documentary evidence required by the last conditions of practice order to the NMC despite having had opportunities to do so. However, the panel considered the positive references provided today from your manager which confirm that you had completed supervisions when the previous conditions were still in place. It also considered that you have been working with a fully informed employer who is willing to support you fulfil a conditions of practice order. The panel saw a testimonial from Tony Gearty, the Chief Executive of Cheswold Park Hospital where you currently work, which stated that you have been reemployed as a Senior Support Worker, not requiring an NMC pin as you had *'been a good employee...and has whilst in our employment continued to perform well'*.

The panel considered that you have been facing difficult personal circumstances in the last six months and that your apparent lack of engagement with the NMC has largely been as a result of the miscommunication with the RCN and its failure to pass on your information to the NMC. It also noted that there were failures of engagement which you

accept personally. However, the panel heard that you are now in a better position to engage with and fully comply with a conditions of practice order including a willingness to provide the NMC with your PDP within two or three weeks and complete online training within the same time period.

The panel was of the view that a conditions of practice order would be sufficient to protect patients from a risk of harm, maintain confidence in the profession and uphold professional standards. It considered that a conditions of practice order would also provide you with the opportunity to address the identified concerns in your practice.

The panel considered a 12-month conditions of practice order would enable you to:

- provide the NMC with the PDP agreed with your manager within three weeks of today's hearing;
- supply evidence of online training undertaken in the areas of consent and record keeping; and
- complete your reflection before the next review hearing showing your insight into the concerns identified.

The panel considered whether a suspension order would be an appropriate order in your case but concluded that, given your personal and mitigating circumstances, a suspension order would be disproportionate at this time.

Accordingly, the panel determined, pursuant to Article 30(1), to impose a conditions of practice order for a period of 12 months from the expiry of the current order. The conditions are as follows:

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 restrict your employment to your current employer, Cheswold Park Hospital and ensure that you work on the same ward as your line manager (or their nominated deputy.)

2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan which includes the following:
  - Six examples of where you have documented clinical incidents which you have had to think about what you needed to do, the approach you took and the outcome.
3. You must undertake an in person and/or online training around consent and record-keeping.
4. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least once every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
5. You must forward to the NMC a copy of your personal development plan within two weeks of it being agreed.
6. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC every three months and at least 14 days before any NMC review hearing or meeting.
7. You must tell the NMC within seven days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
8. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.

9. a) You must within seven days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.
- b) You must within seven days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
10. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions to them
- i. Any organisation or person employing, contracting with or using you to undertake nursing work
  - ii. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services
  - iii. Any prospective employer (at the time of application) where you are applying for any nursing appointment
  - iv. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).

The panel decided to impose thus conditions of practice order, with a review, for a period of 12 months.

Before the order expires, 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 with another order.

This will be confirmed to you in writing.