

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

**Substantive Order Review Hearing
Thursday, 7 September 2023**

Virtual Hearing

Name of Registrant: **Fiona Jane Carpanini**

NMC PIN: 7713219E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – February 2001

Relevant Location: Dorset

Type of case: Lack of competence

Panel members: Rachel Childs (Chair, Lay member)
Beth Maryon (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Gillian Hawken

Hearings Coordinator: Eyram Anka

Nursing and Midwifery Council: Represented by Katherine Higgs, Case Presenter

Ms Carpanini: Present and represented by Andrew Windross,
instructed by Iscoed Chambers

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (18 months) to
come into effect at the end of 18 October 2023
in accordance with Article 30 (1)**

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

Mr Windross, on your behalf, made a request that this case be held partially in private on the basis that proper exploration of your case involves some reference to your health and private matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Higgs indicated that she supported the application to the extent that any reference to your health and private matters should be heard in private.

Having heard that there will be reference to your health and personal circumstances, the panel determined to hold parts of the hearing in private as and when such issues are raised.

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 18 October 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 16 March 2018. This was reviewed on 15 March 2019 and this order was extended for a further period of 12 months. This was reviewed again on 20 March 2020 and the order was extended again for a further period of 24 months. The order was last reviewed on 14 March 2022 where it was further extended for 18 months.

The current order is due to expire at the end of 18 October 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, whilst working as a band 5 nurse at the Queen Elizabeth Memorial Health Centre, between 14 and 16 September 2015 failed to demonstrate the standards of knowledge, skills and judgement required to practise without supervision as a Band 5 staff nurse in that you:

1) ...

2) ...

3) ...

4) *On 14 September 2015 failed to obtain informed consent:*

a) Before administering a depot contraceptive injective;

b) In relation to a travel immunisation;

c) In relation to a whooping cough injection.

5) *On 14 September 2015:*

a) ...

b) Were unable to remove sutures from a patient adequately;

c) ...

6) ...

7) *On 16 September 2015 in relation to an unknown patient:*

a) Failed to hold the auroscope safely;

b) ...

8) *On 16 September 2015 in relation to an unknown patient:*

a) Failed to measure the respiratory rate and/or perform chest/respiratory examinations for a patient presenting with respiratory complaints;

b) ...

9) *Failed a competency assessment.*

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

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

'The panel took into account Mr Ross' and Mr Meiland's submissions, and your evidence. The panel also took into account the two reflective statements provided by you in 2020 and 2022 and also the evidence of the training certificates.

The panel was of the view that you had shown developing insight but that you had not had the chance to put your learning into practice in a clinical setting. It noted that this was because of some unforeseeable personal circumstances. The panel was of the view that there had been no material change of circumstances since the last substantive order review hearing. It noted that you had not been practising as a registered nurse since the conditions of practice order was imposed, and therefore, you had not had the opportunity to engage with the conditions. The panel was of the view that the concerns identified by the last substantive order review hearing panel had not been addressed and, therefore, considered that a risk of repetition remains and that patients would be placed at real risk of harm if you were permitted to practise without restriction. The panel therefore determined that a finding of impairment remains 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 your fitness to practise remains impaired.'

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

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

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

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel noted that due to your personal circumstances, you had not had the opportunity to engage with the conditions in the last four years. The panel noted that you have a desire to return to nursing practice and intend to complete a return to practice course. It was of the view that you should be afforded the opportunity to engage with the conditions. The panel were satisfied that your failings were remediable, and that this could be achieved through workable conditions of practice, as the original substantive hearing panel had determined.

The panel considered the current conditions to be necessary in order to address the concerns, protect the public and meet the wider public interest. In its view to reduce the scope of the conditions would not be appropriate and would leave the public at risk given the lack of remediation since the last review hearing. The panel was satisfied that the current conditions remained appropriate, workable, practicable and proportionate.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because you have not had the opportunity to engage with the conditions of practice order. Further, you have been engaging with the proceedings and keeping the NMC up to date with your personal circumstances. You had also expressed your desire to return to nursing practice and to complete the return to practice course.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 18 April 2022. It considered that the following conditions remain 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. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of:

- a) Working at all times under the direct observation of a registered nurse until signed off as competent for the relevant band 5 competencies as prescribed by your employer;*

- b) Once signed off as competent in all of the relevant band 5 competencies you must work at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is physically present in or on the same ward, unit, floor, or home that you are working in or on.*
- 2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practise:*
 - a) Band 5 competencies;*
 - b) Ensuring informed consent;*
 - c) Safe working practices;*
 - d) Assessment of nursing risk;*
 - e) Your ability to raise concerns immediately whenever you come across situations that put patients or public safety at risk.*
- 3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every week until your band 5 competencies are signed off and thereafter every month to discuss and document the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
- 4. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment, whichever is sooner.*
- 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 at least 7 days before any NMC review hearing or meeting.*

6. *You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*

7. *You must disclose a report not more than 28 days old 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 any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*

8. *You must tell the NMC within 7 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.*

9. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*

10. a) *You must within 7 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 7 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.*

11. 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 listed at (1) to (10) above, to them:

- a) Any organisation or person employing, contracting with or using you to undertake nursing work
- b) Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services
- c) Any prospective employer (at the time of application) where you are applying for any nursing appointment
- d) 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).'

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 bundles prepared on your behalf incorporating your competency assessments, your reflective piece and a testimonial from your current line manager. The panel also considered the submissions made by Ms Higgs and Mr Windross.

You gave evidence under affirmation. You told the panel that the contents of your reflective statement are true.

Following questions from Ms Higgs you told the panel that you have not worked as a registered nurse between 2018 and 2022 because of your personal circumstances and problems securing employment. You informed the panel that you applied for a return to practice course on 3 September 2023, but the University told you to get back to them after this hearing.

Ms Higgs questioned you about some of the conditions in your current order. She asked if the evidence you provided, namely the Covid-19 vaccination competency assessments, are your evidence to fulfil the personal development plan (PDP) requirement in condition two. You told the panel that you notified your manager, and you thought a report had been sent earlier. You said that you then wrote to your nurse manager and asked if she could fill out the form the RCN sent, but you were not aware that it had not been completed.

Mr Windross asked you about whether your recent work with vaccines involves working in a nursing role. You informed the panel that your work with vaccines currently is working as a trained nurse under supervision. You told the panel that all the people you work with are trained senior registered nurses.

In response to questions from the panel, you said in regard to the original charges found proved it was never clear which part of the informed consent you missed. However, you told the panel that prior to completing your further training you did not quite understand how some people may not be able to give consent. You now have a clearer understanding.

Following panel questions about your reflective statement you told the panel that you were too frightened to speak up because you were terrified of the matron, who conducted your assessment, and you were put in a position you should not have been in relation to using the auroscope. You explained that it was a new medical centre, and you were not familiar with the equipment because it was not your own. You said that you were sent to an army base and felt out of your element and another nurse had set up the clinic before you arrived which contributed to the difficulties you encountered. You told the panel that you realised that you should have asked the RCN and/or the NMC for advice beforehand. You acknowledged that you were under a lot of pressure and were not comfortable with the

pace at which the matron was demanding you work. You informed the panel that in future you will not allow people to pressure you like that again.

In regard to your current role as a bank vaccinator, you told the panel that it is a registered nursing role and every one that works there has to be a registered nurse. You told the panel that in order to work in your current role you have to have the ability to get precise medical history of someone and be able to act if someone has an allergic reaction to the vaccines.

The panel asked whether you think there are any missing areas in the documentation provided today that do not address the areas of competency that you have been asked to address as part of condition two. You took the panel through the evidence you provided that addresses these areas. You said that Band 5 competency is based on the job that you do but the Band 5 competencies within your current role are on the Covid-19 vaccinator assessment forms which you have provided as evidence before the panel.

Ms Higgs submitted that you admitted most of the charges against you in the substantive proceedings, you have shown insight through your reflective statement, and you have made efforts to strengthen your practice through training courses and your recent application to a return to practise course. She also submitted that the NMC acknowledge that that you have been working as a vaccinator since August 2022 and you did inform the NMC in compliance with your conditions of practice order.

Ms Higgs submitted however, that the NMC's position is that you have not complied with some of the requirements within the order. She submitted that it is said on your behalf that the documents you provided amount to the PDP and report requirement. However, she submitted that the document relied upon is not a personal development plan which sets out specific aims for you to achieve and addresses the specific concerns with your practice. She submitted that although the letter from your manager supports that you have been competent in the area of vaccination it does not address any other areas of practice. She further submitted that she accepts that there has been some remediation, but you have not had the opportunity of working in an environment where the other areas of concern could have been addressed.

Ms Higgs submitted that there remains a risk to the public if you were allowed to practise unrestricted. Additionally, she submitted that an order should remain in place to protect the public, to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

Ms Higgs further submitted that an order remains necessary because your fitness to practise remains impaired. She invited the panel to consider a substantive conditions of practice order because it is proportionate in the circumstances of this case and the conditions could be amended to reflect what the panel may consider partial remediation in relation to the vaccines and informed consent.

Mr Windross submitted that your fitness to practise is no longer impaired. He referred the panel to personal circumstances you were going through during the previous reviews and the decisions and reasons the previous panels relied on to find your fitness to practise impaired.

Mr Windross submitted that you have undertaken extensive training and effective steps to maintain your skills and knowledge since the last hearing. He referred the panel to the application you made to a return to practice course.

Mr Windross referred the panel to the payslips provided as evidence and submitted that [PRIVATE] in November 2022 to early December 2022 which explains the gap and then the clinic was closed in December 2022 and was reopened at the end of April 2023 which explains the gaps in your employment.

Mr Windross submitted that your personal development plan was achieved by undertaking the competency assessment for administering vaccines, which is normally done once but in order to comply with your conditions of practice order you did the competency assessment once a month while you were working.

Mr Windross submitted that you demonstrated a clear ability to obtain informed consent during your vaccination work, which is particularly relevant as consent before injections, appeared to be the primary concern of the first fitness to practise panel. He further submitted that you have demonstrated the ability to pass regular competency assessments as evidenced in the documents before the panel. He submitted that it is evidenced through the competency assessment front page that you understand the Band 5 competencies. He informed the panel that you have complied with all the conditions in the conditions of practice order.

Mr Windross further submitted the testimonial addressed the requirements of condition four and invited the panel to conclude that the signed competency assessment demonstrates your progress towards the requirements of a PDP.

Mr Windross submitted that you demonstrated insight into your failings through your candid oral evidence and in the reflection you provided to the panel. He further submitted that you have a record of safe practice without further incident since the previous hearing. He submitted that your compliance with the conditions of practice order indicates that you are now safe to practise unrestricted and that there is no longer a risk to patient safety. He submitted that therefore the panel should allow the existing order to expire.

Mr Windross submitted that if the panel considers a conditions of practice order the most appropriate order then he invited the panel to amend the current conditions and reduce their scope to reflect the significant progress that you made towards remedying the concerns initially identified by the previous panel.

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 your fitness to practise remains impaired.

The panel acknowledged that you provided significant evidence to demonstrate your strengthened practice. The panel had regard to the documents you put before it, including your reflective statement, a testimonial from your manager, training certificates, your current contract of employment, an application to a return to practice course and a number of Covid-19 vaccinator competency assessments. The panel determined that this shows that you have met most of the requirements under condition 2, namely (b) to (e). Additionally, the panel is satisfied that you have provided sufficient evidence from your current role as a covid vaccinator to demonstrate that you adhere to safe working practices, understand how to obtain informed consent, make appropriate assessments of risk and how to raise concerns. The panel considered that your insight into your original lack of competence has developed since the last hearing and is now good.

However, the panel is of the view that there are a number of outstanding competence concerns found proved at the original hearing in 2018 that have not been addressed. These include competence in removing sutures, conducting respiratory examinations and using an auroscope. This is due to the specific nature of the nursing role in which you have been employed which has not afforded you the opportunity to strengthen your practice in these areas. The panel noted that you stated in your evidence that you are prepared to undertake specific training in the necessary areas to strengthen your practice.

In light of this, this panel determined that you are liable to repeat some of the matters of the kind found proved because you have not had the opportunity as yet to work in an environment that enables you to address those concerns. The panel therefore decided that a finding of continuing impairment is necessary on the ground 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 your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate because there are certain areas of nursing practice within the charges found proved that you have not demonstrated competence in. 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 areas of concern that are not addressed in the evidence provided, an order that does not restrict your practice would not be appropriate in the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

The panel determined that it would be possible to formulate appropriate and practicable conditions which would address the failings highlighted in this case. The panel accepted that you have been complying with the current substantive conditions of practice, engaging with the NMC and are willing to comply with conditions imposed.

The panel was of the view that a varied conditions of practice order is sufficient to protect patients and the wider public interest, noting that the original panel found that there was a general lack of competence. The panel determined that there are workable conditions that could be formulated to address the outstanding competency concerns raised by the original panel that have not been addressed by the evidence presented at this hearing.

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 you have provided a lot of information to demonstrate your strengthened practice.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 18 October 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 not remove sutures from a patient unless directly supervised until you are signed off as competent by another registered nurse.
- 2) You must not make respiratory and chest examinations unless you are directly supervised until you are signed off as competent by another registered nurse.
- 3) You must not use an auroscope unless supervised until you are signed off as competent by another registered nurse.
- 4) You must send confirmation and evidence that you have met the competencies identified in the previous conditions one to three to the NMC at least 7 days before any NMC review hearing or meeting.
- 5) You must tell the NMC within 7 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.

- 6)
 - a) You must within 7 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 7 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.
- 7) 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 listed at (1) to (10) above, to them:
 - a) Any organisation or person employing, contracting with or using you to undertake nursing work.
 - b) Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services.
 - c) Any prospective employer (at the time of application) where you are applying for any nursing appointment.
 - d) 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 period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 18 October 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at any review hearing;
- References and/or testimonials from your line manager(s) or other colleagues in nursing or any other work you have undertaken in a healthcare setting;
- Evidence of how you have kept your nursing knowledge and skills up to date.

This will be confirmed to you in writing.

That concludes this determination.