

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

**Substantive Order Review Meeting
19 September 2023**

Virtual Meeting

Name of Registrant: Helen Johnson

NMC PIN 89A3281E

Part(s) of the register: Registered Nurse – Sub part 1
Learning Disabilities Nursing – March 1992

Relevant Location: Aberdeenshire

Type of case: Misconduct

Panel members: Dave Lancaster (Chair, lay member)
Hannah Harvey (Registrant member)
Simon Banton (Lay member)

Legal Assessor: Charles Parsley

Hearings Coordinator: Sophie Cubillo-Barsi

Order being reviewed: Conditions of practice order – 12 months

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect at the end of 6 November 2023 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Ms Johnson's registered email address by secure email on 27 July 2023.

The panel took into account that the Notice of Meeting provided details of the review meeting, that the review meeting would be held no sooner than 18 September 2023 and inviting Ms Johnson to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Johnson has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to impose a conditions of practice order for 12 months. This order will come into effect at the end of 6 November 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 7 October 2022.

The current order is due to expire at the end of 6 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:

1) On 07 September 2020: **[Proved in its entirety]**

a) *In respect of Resident A:*

- i. *Did not check in Resident A's medication on admission.*
- ii. *Did not check, or, in the alternative, record checks you had conducted of, Resident A's:*
 - (1) *General condition.*
 - (2) *Skin.*
 - (3) *Vital signs.*
- iii. *Did not start a food and fluid chart for Resident A.*
- iv. *Did not write the MAR charts for Resident A.*
- v. *Did not complete a moving and handling risk assessment in respect of Resident A.*
- vi. *Did not complete an evacuation plan for Resident A.*
- vii. *Did not put in place infection control measures for Covid-19 following Resident A's admission.*

b) *In respect of Resident B:*

- i. *Did not document an unwitnessed fall.*
- ii. *Did not conduct any checks of Resident B, or, in the alternative, record what checks you had conducted and the outcome of those checks.*
- iii. *Did not inform Resident B's next of kin of the fall.*
- iv. *Did not handover that Resident B had suffered an unwitnessed fall.*

2) On 14 December 2020: **[Proved]**

- a) *Did not to put in place infection control measures for Covid-19 following Resident C's admission.*

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

The original panel determined the following with regard to impairment:

“The panel found that patients were put at risk as a result of Ms Johnson’s misconduct in the sense that Resident A received no proper checks on admission, which deprived colleagues of a baseline against which to measure Resident A’s state of health. The fall of Resident B was not documented in a timely or detailed way meaning that colleagues were not alerted to the need to monitor any issues arising, and on two occasions the failure to implement COVID-19 measures risked not only the safety of the resident in question, but also the wider safety of other residents and colleagues. Ms Johnson’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel was satisfied that the misconduct in this case is capable of remediation because it related to basic nursing practices. Therefore, the panel carefully considered the evidence before it in determining whether or not Ms Johnson has remedied her practice. The panel took into account that in the intervening period since the conduct, Ms Johnson has had ample opportunity to remedy the conduct, but the panel had no evidence before it that she had done so. The only evidence of reflection consisted of a reflective piece in September 2020 which showed limited insight into the impact of her conduct and did not stop her repeating her failure with regard to COVID-19 safety measures a few months later.

The panel concluded that there is a high risk of repetition based on the lack of evidence that Ms Johnson has taken any steps to improve her practice and the repetition of the COVID-19 safety measures failure, despite the previous investigation and action by her employers. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This 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 determined that a finding of impairment on public interest grounds is also required because public confidence in the profession would be undermined if there were no finding of impairment in view of the nature and extent of the misconduct.

Having regard to all of the above, the panel was satisfied that Ms Johnson's fitness to practise is currently impaired."

The original panel determined the following with regard to sanction:

"Having found Ms Johnson's 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 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:

- *Lack of insight into failings.*

Ms Johnson has not engaged with NMC in these proceedings and so has not taken the opportunity to demonstrate any insight into the effect of her conduct, or show how she would address her failings. Any insight shown in her reflective piece dated 25 September 2022 was confined to stating that the conduct would not be repeated and demonstrated no evidence of any wider appreciation of the impact of her conduct on others.

- *A pattern of misconduct over a period of time.*

The failure to carry out assessments, and complete records with regard to Residents A and B and handover to ensure completion of care related tasks, demonstrated a widespread failure to follow a number of aspects of the required procedure. The failure to implement COVID-19 safety measures was repeated

despite the assurance in the reflective piece that such a failure would not happen again. Evidence from the witnesses suggested that it was not unusual for other members of staff to have to pick up tasks that Ms Johnson had failed to perform.

- *The repeated failure to implement COVID-19 safety measures was aggravated by the context of the vulnerability of care home residents at the height of the COVID-19 pandemic when there was significant public concern about the high death rate in care homes.*

The panel considered what mitigating factors there might be. It recognised that there had not been previous regulatory concerns raised about Ms Johnson's practice, but did not consider this a mitigating factor as such, as that simply represented what should be the standard for a registered nurse. It took into account that Ms Johnson did take a step to rectify her failure with regard to assessing and documenting the fall of Resident B by notifying the night nurse by text, albeit at a very late stage in the night shift, and that without this her failure would not have come to light. However, when considering this in the context of there being no evidence of assessment of the fall, and the lack of detail in the text message as to any assessment made, together with its timing which had precluded any monitoring overnight, the panel attached little weight to it as a mitigating factor.

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 would not be consistent with its findings on the risk of repetition and the risk to patient safety.

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 Ms Johnson's 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 Ms Johnson's 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. A caution order would not be sufficient to protect the public, nor would it maintain public confidence in the profession. A member of the public would be very concerned to learn that a registrant who had disregarded COVID-19 safety measures and basic nursing requirements was permitted to practise unrestricted.

The panel next considered whether placing conditions of practice on Ms Johnson'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 took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- No evidence of general incompetence;*
- Potential and willingness to respond positively to 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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel in its findings had concluded that the conduct was remediable because it related to skills and competences basic to the practice of a nurse that ought to be capable of being remedied by practising in accordance with policies and procedures, supervision and reflection.

The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Johnson should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined 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 or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Ms Johnson's case because conditions could be formulated that would adequately protect the public and safeguard the public interest, and it would be in the public interest to return an experienced nurse to safe practice.

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 send to the public and the profession a clear message about 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 registered nurse of Band 5 or above (with a minimum of two years experience) any time you are working. Your supervision must consist of:*
 - Working on the same ward/floor/unit.*
 - Weekly meetings to discuss your clinical caseload.*

- 2. You must keep a reflective practice profile. The profile will:*

- *Detail one case each week where you undertake or assist with admission procedures.*
- *Set out the nature of the processes followed, documentation completed and care given.*
- *Be signed by your line manager, mentor or supervisor each time.*
- *Contain feedback from your line manager, mentor or supervisor on how you followed protocols and processes, completed documentation and gave the care.*

You must send your case officer a copy of the profile every three months.

3. *You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about admission procedures, risk assessments, implementation of safety procedures, and protocols and completion of records. You must:*
 - *Send your case officer a copy of your PDP by 28 days after you commence employment.*
 - *Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.*
 - *Send your NMC Case Officer a report from your line manager, mentor or supervisor every three months. This report must show your progress towards achieving the aims set out in your PDP. This report should be sent at least 28 days before any NMC review meeting/hearing*
4. *You must keep the NMC informed about anywhere you are working by:*
 - a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*

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

6. *You must immediately give a copy of these conditions to:*
 - a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*
 - c) *Any employers you apply to for work (at the time of application).*
 - d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*

7. *You must tell your NMC Case Officer, within seven days of your becoming aware of:*
 - a) *Any clinical incident you are involved in.*
 - b) *Any investigation started against you.*
 - c) *Any disciplinary proceedings taken against you.*

8. *You must allow your NMC Case Officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
 - a) *Any current or future employer.*
 - b) *Any educational establishment.*

c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 12 months.

Before the order expires, a panel will hold a review hearing to see how well Ms Johnson has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development, including documentary evidence of completion of any courses, and testimonials from a line manager or supervisor that detail your current work practices.*
- Attendance at any review hearing.*
- A reflective piece using a recognised reflective tool such as Gibbs that demonstrates insight into the impact of the conduct giving rise to the concerns on residents, colleagues and on public confidence in the nursing profession.”*

Decision and reasons on current impairment

The panel has considered carefully whether Ms Johnson's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Ms Johnson's fitness to practise remains impaired.

The panel noted that Ms Johnson's registration on the NMC register expired on 31 March 2022. The panel did not have any information before it attesting to whether, prior to the expiration of her registration, Ms Johnson worked as a registered nurse after the substantive hearing and the conditions of practice order was imposed. The panel did not have any documentation before it to suggest that Ms Johnson had complied with either the conditions of practice order and/or the suggestions made by the original panel. To the contrary, it is apparent that Ms Johnson has ceased communication with the NMC, her Regulator.

In the absence of any evidence of developing insight and/or remediation, the panel determined that Ms Johnson 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 Ms Johnson's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Ms Johnson'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 Ms Johnson's 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 Ms Johnson's 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 imposing a further conditions of practice order on Ms Johnson'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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. It was of the view that a continuation of the current order would allow Ms Johnson a further opportunity to re-engage with the regulatory proceedings, renew her registration, and begin to evidence compliance with the conditions of practice order. The panel determined that continuing the order would continue to protect the public and address the public interest concerns identified.

The panel carefully gave consideration as to whether to impose a suspension order or a striking-off order given the absence of any evidence of compliance with the existing order. However, it determined that to do so would be disproportionate at this time. It would be open to a reviewing panel to impose such an order should there be no material change in Ms Johnson's engagement with the NMC.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 6 November 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 ensure that you are supervised by a registered nurse of Band 5 or above (with a minimum of two years experience) any time you are working. Your supervision must consist of:
 - Working on the same ward/floor/unit.
 - Weekly meetings to discuss your clinical caseload.

2. You must keep a reflective practice profile. The profile will:
 - Detail one case each week where you undertake or assist with admission procedures.
 - Set out the nature of the processes followed, documentation completed and care given.
 - Be signed by your line manager, mentor or supervisor each time.
 - Contain feedback from your line manager, mentor or supervisor on how you followed protocols and processes, completed documentation and gave the care.

You must send your case officer a copy of the profile every three months.

3. You must work with your line manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns about admission procedures, risk

assessments, implementation of safety procedures, and protocols and completion of records. You must:

- Send your case officer a copy of your PDP by 28 days after you commence employment.
- Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.
- Send your NMC Case Officer a report from your line manager, mentor or supervisor every three months. This report must show your progress towards achieving the aims set out in your PDP. This report should be sent at least 28 days before any NMC review meeting/hearing

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

- d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e. Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
7. You must tell your NMC Case Officer, within seven days of your becoming aware of:
- a. Any clinical incident you are involved in.
 - b. Any investigation started against you.
 - c. Any disciplinary proceedings taken against you.
8. You must allow your NMC 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

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 6 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 consider whether Ms Johnson has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Evidence of professional development, including documentary evidence of completion of any courses, and testimonials from a line manager or supervisor that detail your current work practices.
- Attendance at any review hearing.
- A reflective piece using a recognised reflective tool such as Gibbs that demonstrates insight into the impact of the conduct giving rise to the concerns on residents, colleagues and on public confidence in the nursing profession.”

This will be confirmed to Ms Johnson in writing.

That concludes this determination.