

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

**Substantive Order Review Hearing
Thursday, 29 February 2024**

Virtual Hearing

Name of Registrant: Ore-Oluwa Funlola Richards

NMC PIN 08D0701E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nurse – May 2008

Relevant Location: London

Type of case: Misconduct

Panel members: Andrew Harvey (Chair, lay member)
Jane Jones (Registrant member)
Helen Kitchen (Lay member)

Legal Assessor: Alain Gogarty

Hearings Coordinator: Clara Federizo

Nursing and Midwifery Council: Represented by Amanda Bailey, Case Presenter

Mrs Richards: Present and represented by Dr Abbey Akinoshun

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (8 months) to come into effect on 5 March 2024 in accordance with Article 30 (1)**

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

At the outset of the hearing, Dr Akinoshun made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to matters pertinent to your personal and family life. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Bailey made no objections and supported the 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 determined to go into private session in connection with your personal and private family matters as and when such issues are raised in order to protect your privacy.

Decision and reasons on review of the substantive order

The panel decided to extend the current conditions of practice order for a period of 8 months.

This order will come into effect at the end of 5 March 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first effective review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 3 February 2023. This order was to be reviewed on 17 January 2024; however, this was adjourned for a later date.

The current order is due to expire at the end of 5 March 2024.

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, during the night shift of 25/26 July 2019:

- 1. Slept on duty which was not permitted;*

- 2. Failed to carry out and/or ensure that hourly checks were carried out between 12am and 3am for one or more of the following residents:*
 - a) Resident A*
 - b) Resident B*
 - c) Resident C*
 - d) Resident D*
 - e) Resident E*
 - f) Resident F*
 - g) Resident G*
 - h) Resident H*
 - i) Resident I*
 - j) Resident J*
 - k) Resident K*
 - l) Resident L*
 - m) Resident M*
 - n) Resident N*
 - o) Resident O*
 - p) Resident P*
 - q) Resident Q*
 - r) Resident R*
 - s) Resident S*
 - t) Resident T*

And, by the reason 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 your conduct put patients at risk of significant harm. Moreover, the panel determined that your misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that confidence in the nursing profession would be undermined if its regulator did not find your fitness to practise to be impaired.

The panel also took into account the questions identified in Cohen v General Medical Council, namely whether the conduct which led to the charges is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

In considering whether you have strengthened your practice, the panel referred to the evidence before it. It took into account your two references, and the fact that since the matters found proved there have been no further reported concerns. However, there is nothing to indicate that you have taken any significant steps to strengthen your practice and to demonstrate insight.

In the light of the above, the panel decided that there is a risk of repetition of your misconduct and that a finding of impairment is therefore necessary on the grounds of public protection.

The panel bore in mind that 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

The original 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. Misconduct of this nature requires a sanction.

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. 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 determined 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 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;*
- 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. The panel accepted that you would be willing to comply with conditions of practice.

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

The panel did consider imposing a suspension order or a striking-off order but determined that would be disproportionate. The panel was satisfied that as you have continued to work as a registered nurse without restriction for three years since the incident, and without any further issue, removal from the register was not proportionate.

The panel has therefore 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.

In reaching this decision, the panel carefully considered the submissions of Ms Millar in relation to the sanction that the NMC was seeking. However, the panel decided that a conditions of practice order would give you greater opportunity to develop your insight, undertake additional training in order to strengthen your practice and protect the public.

The panel determined that the following conditions are appropriate and proportionate:

'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. Undertake face to face adult safeguarding level three training by a recognised provider.*
- 2. Undertake training in clinical record keeping and have a monthly audit of your clinical records reviewed by your supervisor.*
- 3. A personal and in-depth reflection on the impact of your actions on patients, other staff, and the nursing profession, and provide specific examples on what you have learnt and how your practice has changed as a result of this.*
- 4. You must work on the same shift as, but not always directly observed by, another registered nurse any time you are working.*
- 5. You must undertake monthly meetings with your clinical supervisor who must a registered nurse of band 6, or equivalent, or above to discuss:*
 - Your clinical practice,*
 - Recording keeping,*
 - Safeguarding*
- 6. You must send the NMC a report seven days in advance of your next NMC hearing or meeting from your clinical supervisor in regard to:*
 - Your clinical practice,*
 - Recording keeping,*
 - Safeguarding*
- 7. 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.*

8. *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.*

9. *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.*

10. *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.*

11. *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.'*

Decision and reasons on current impairment

The panel has considered 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 documentation by Dr Akinoshun on your behalf. It has taken account of the submissions made by Ms Bailey on behalf of the NMC.

Ms Bailey referred this panel to the original panel's decision and reasons on impairment. She submitted that you remain impaired for the same reasons as the level of risk of harm and repetition found by the original panel has not changed and you have yet to demonstrate insight and/or a sufficient period of strengthened practice.

Ms Bailey outlined that there is evidence of training you have undertaken, as well as some supervision record from your supervisor which addresses some areas of concerns relating to the charges but that it is unclear if these meetings are continuous. She accepted that you have made some effort to comply with most of your current conditions. She highlighted that you have not provided a reflective piece and therefore have not shown any insight into the concerns raised. She submitted that, in light of your personal mitigation, you have only worked for a short period of time since the conditions of practice were first imposed. The panel may take into account that although it is helpful you have made this start and progress, you have not yet had sufficient time at work to demonstrate that there is no longer a risk and that you can safely return to practice without restriction.

Ms Bailey submitted that the joint position of the parties is that you accept that you are currently impaired and that the current conditions remain workable and appropriate to protect the public.

The panel also had regard to the submissions made by Dr Akinoshun on your behalf. He submitted that you are continuing to work at Parkview Nursing Home to date and have made progress and are complying as much as you can with the conditions of practice imposed. He submitted that you have taken steps to strengthen your practice in relation to the areas of concern and highlighted for the panel your improvements on record keeping, as evidenced by the supervisory report dated 22 February 2024, as well as the additional

training on safeguarding and record keeping, which is evidenced by the certificate of attendance dated 23 March 2023.

Dr Akinoshun accepted on your behalf that your fitness to practice remains currently impaired as you have not had the opportunity to fully comply with your conditions because you have experienced a bereavement and have had personal family matters to attend to in Nigeria since the last hearing in 2023, which made it difficult for you to focus on work and comply with your conditions. He submitted that during this period you felt [PRIVATE] personal family matters from July 2023, [PRIVATE]. He submitted that you did not have the '[PRIVATE]' to comply fully with your conditions of practice, describing 2023 as *“one of the worst years since [you have] been living”*.

Dr Akinoshun informed the panel that the family matters have been settled since and you are in a much better state of mind than where you were last year. He submitted that since your return from Nigeria, you have been more focused and feel that you can now work safely and competently.

Dr Akinoshun invited the panel to find that the current conditions of practice order remains adequate and appropriately protects the public. He invited the panel to extend the order for a further 3 months to address other areas of concern and achieve the conditions set. He also added that you have kept your supervisor informed and continue to communicate with them in relation to this and they are content to accommodate necessary arrangements to enable you to comply with conditions.

Following panel questions, Dr Akinoshun stated that your supervisor was the Deputy Home Manager of the care home, that your period of absence and difficulties with work took place from July to November 2023. You had only four supervisory meetings prior to July 2023. He also confirmed on your behalf that it is possible, and you are willing, to return to monthly supervision meetings and for your supervisor to commence monthly audits of your clinical record keeping.

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 had regard to the new information and documentation before it, including the safeguarding and record keeping training certificate, supervisory record dated in February 2024 and additional documentation relating to your bereavement. The panel noted that the circumstances of the case have not substantially changed. It considered that the charges found proved were serious and that the risk of harm and repetition remain for the same reasons found by the original panel.

The panel noted that the original panel found that you had insufficient insight. At this hearing, the panel had no evidence that you have yet demonstrated insight. It did not have any written or oral reflections from you or information before it which demonstrated your understanding of how your actions put patients at a risk of harm or what you would do differently in the future.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the training day you attended on 23 March 2023 in relation to safeguarding and clinical record keeping, which was relevant to some of the concerns raised. However, the panel noted that there were still some areas of concern yet to be addressed. It also had sight of the supervision record you have provided; the panel found this of limited assistance because it was a record of a single supervisory event and was insufficiently specific as it was not focused on the issues raised by this case.

The panel heard and acknowledged the bereavement and personal challenges you faced during the period from July 2023 to November 2023. It noted that there was limited evidence of steps taken to strengthen your practice during the five months prior to this. The panel accepted that you felt you have not had a proper chance to fully comply with your conditions in the way that you would like to have done, although it considered that you could have made more progress prior to July 2023.

In light of this, this panel determined that the level of risk had not increased. However, you are still liable to repeat matters of the kind found proved as you are yet to address the concerns raised and demonstrate that you can practise safely and professionally. 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 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 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 charges found proved, and the public protection risks 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 extending the existing conditions of practice order on your registration would still be sufficient. 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 demonstrated compliance with some of the current substantive conditions of practice, namely Condition 1 and the training in clinical record keeping aspect in Condition 2. It was satisfied that no further actions in respect of these were required of you. However, in respect of the remainder of Condition 2, it noted that you had not demonstrated compliance with the condition to have a monthly audit of your clinical records reviewed by your supervisor. There was no evidence of compliance with Condition 3.

The panel accepted that you have not had a proper chance to fully comply with your conditions in light of your personal circumstances, and it recognised that you are engaging with the NMC and are willing to comply with any conditions imposed.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence and that this would give you greater opportunity to develop your insight and protect the public. In this case, there are conditions which could be formulated which would protect patients during the period they are in force.

The panel considered 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 been able to continue to work under the current conditions imposed and no further incidents or concerns in relation to your practice were raised since.

Accordingly, the panel determined, pursuant to Article 30(1)(a) to extend the conditions of practice order for a period of 8 months, which will come into effect on the expiry of the current order, namely at the end of 5 March 2024. 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. Undertake face to face adult safeguarding level three training by a recognised provider.*
- 2. Undertake training in clinical record keeping and have a monthly audit of your clinical records reviewed by your supervisor.*
- 3. A personal and in-depth reflection on the impact of your actions on patients, other staff, and the nursing profession, and provide specific examples on what you have learnt and how your practice has changed as a result of this.*
- 4. You must work on the same shift as, but not always directly observed by, another registered nurse any time you are working.*
- 5. You must undertake monthly meetings with your clinical supervisor who must a registered nurse of band 6, or equivalent, or above to discuss:*
 - Your clinical practice,*
 - Recording keeping,*
 - Safeguarding*
- 6. You must send the NMC a report seven days in advance of your next NMC hearing or meeting from your clinical supervisor in regard to:*
 - Your clinical practice,*
 - Recording keeping,*
 - Safeguarding*
- 7. 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.*
8. *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.*
9. *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.*
10. *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.*
11. *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 8 months, in order to allow you to make the necessary arrangements with your employer, as well as have sufficient time to demonstrate full compliance with the conditions throughout the 8-month period.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 5 March 2024 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing. 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 continued engagement with the NMC and attendance at any review.
- In respect of Condition 2, evidence of further contemporaneous/dated records of your monthly audit of clinical records reviewed and signed by your supervisor.
- Evidence of compliance with Condition 3 (by way of contemporaneous dated and signed written evidence or in oral evidence).
- Written evidence of compliance with Condition 4, which would be signed by a supervisor indicating the supervisor's qualification and role at your place of work.
- Signed and dated written records or oral evidence from your clinical supervisor detailing your compliance with Condition 5. This would include a reference from your current employer, which would confirm the level of seniority of your supervisor and that the supervisor has had sight of the conditions of practice imposed.

This will be confirmed to you in writing.

That concludes this determination.