Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Order Review Hearing
Monday 24 March 2025

Virtual Hearing

Name of Registrant:	**Julian Alexander Phillip Faulkner**
NMC PIN	99D0110E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (Level 1) – 7 March 2003
Relevant Location:	Staffordshire
Type of case:	Misconduct
Panel members:	Rachel Ellis (Chair, Lay member) Janet Williams (Registrant member) Matthew Wratten (Lay member)
Legal Assessor:	Patricia Crossin
Hearings Coordinator:	Emma Norbury-Perrott
Nursing and Midwifery Council:	Represented by Nicola Kay, Case Presenter
Mr Faulkner:	Present and represented by Richard Padley, instructed by the Royal College of Nursing (RCN)
Order being reviewed:	Suspension order (12 months)
Fitness to practise:	Impaired
Outcome:	**Suspension order (12 months) to come into effect at the end of 2 May 2025 in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to extend the current suspension order by 12 months.

This order will come into effect at the end of 2 May 2025 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months at a remitted hearing by a Fitness to Practise Committee panel on 4 April 2024.

The current order is due to expire at the end of 2 May 2025.

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, whilst working at Fauld House Nursing Home:*
>
> *1. On a date or dates on or around 28 August 2019:*
>
> *a) …;*
> *b) Made a recording of Patient A on your mobile phone;*
> *c) Played the recording of Patient A to one or more of your colleagues;*
> *d) ...*
>
> *AND in light of the above, your fitness to practise is impaired by reason of your misconduct.'*

The panel at the previous hearing determined the following with regard to impairment:

'The panel determined that your misconduct constituted a serious breach of the fundamental tenets of the nursing profession as you failed to treat Patient A kindly and with respect and dignity and thereby failed to uphold the standards and values of the nursing profession. Thus, you brought the reputation of the profession into disrepute.

The panel had regard to the NMC Guidance on Impairment especially the question which states:
'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

The panel is aware that this is a forward-looking exercise and, accordingly, it went on to consider whether your misconduct is remediable and whether you had strengthened your nursing practice.

The panel had regard to the case of Cohen v GMC where the court addressed the issue of impairment with regard to the following three considerations:

a. *'Is the conduct that led to the charge easily remediable?*
b. *Has it in fact been remedied?*
c. *Is it highly unlikely to be repeated?'*

In considering these factors, the panel had regard to the nature and context of the misconduct, the extent to which it is remediable and any efforts you had made to remediate your conduct.

Regarding insight, the panel took account of your reflective statement. The panel was mindful that given your denial of the facts found proved, it was not possible for you to provide an explanation as to the reasons for your actions as set out in charges 1b and 1c.
It noted, however, that you have demonstrated some developing insight into the inappropriateness of the covert recording of patients without their

consent and its potential impact on patients, their families, your colleagues, the nursing profession and the wider public. In your reflective statement, you discussed the ethics and principles around the recording of patients and the importance of obtaining consent for such recordings. However, the panel concluded that you had failed to demonstrate an in depth understanding of the potential impact of your misconduct on Patient A and/or her family as well as the reputation of the nursing profession, and therefore had demonstrated limited insight into your misconduct.

The panel took account of the various training courses that you had completed, particularly those that are relevant to the areas of concern. It noted that you had kept your self updated with the relevant knowledge and skills in the areas of concern.

The panel took into account that prior to you being placed on the DBS Child and Adult Barred list on 29 October 2020, you had practised unrestricted as a registered nurse between September 2019 and October 2020, with no further concerns raised about your nursing practice. In this regard, the panel took particular account of the positive references related to your work as a nurse during this period, as well as the other testimonials you provided.

Nevertheless, the panel bore in mind that you had been struck off the register in 2009 for misconduct that included actions where you had failed to respect and uphold the dignity of patients under your care. It took into account that you were subsequently restored to the register, however, the panel was concerned that this current misconduct took place within two years of your restoration to the register and that the incident occurred within two months of your employment as a registered nurse at the Home. The panel was of the view that there was a connection between the conduct, which is attitudinal in nature, that led to you being struck off in 2009 and the current case. Whilst your misconduct in relation to the previous case was of a far more grave nature, both cases involved a failure to uphold and respect the dignity and privacy of vulnerable patients

under your care. The panel was concerned that the lessons which you should have taken from the circumstances that led to your previous striking off had not been fully learned. Therefore, in accordance with the case of Cohen above, the panel could not be satisfied that the behaviour was highly unlikely to be repeated.

The panel noted that you had highlighted the unfavourable working environment and culture at the Home. However, the panel considered that such circumstances could not justify or explain your conduct towards Patient A.

The panel was also of the view that the nature of your misconduct was such that it could discourage members of the public from seeking/accessing appropriate care when required for themselves or their vulnerable relations. Family members might well be reluctant to place relations living with dementia in the care of healthcare providers if they felt that their dignity might be compromised in this way.

In light of all the above, the panel determined 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 proper professional standards for members of those professions.

The panel had regard to the serious nature of your misconduct and the public protection issues it had identified and determined that public confidence in the profession, particularly as the misconduct involved a failure to respect and uphold the dignity of a patient, would be undermined if a finding of impairment were not made in this case. For these reasons, the panel determined that a finding of current impairment on public interest

grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.'

The panel at the previous hearing determined the following with regard to sanction:

'Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel identified the following aggravating features:

- *A previous striking-off order for concerns, which although far more serious than the misconduct in this case, also related to your not affording appropriate dignity and respect to patients in your care and which were also attitudinal in nature.*
- *Repetition of similar concerns within two months of your employment as a registered nurse at the Home. This was your first nursing role since being restored to the register.*
- *Your abuse of a position of trust*
- *Your conduct placed Patient A at risk of potential harm in terms of emotional and psychological distress.*
- *Your failure to respect and uphold the privacy and dignity of a vulnerable patient.*

- *Your placement on the DBS Child and Adult Barred list on 29 October 2020.*

The panel also identified the following mitigating features:

- *Evidence of working as a registered nurse between September 2019 and October 2020 without further concerns raised about your nursing practice and being promoted to the role of deputy manager during this period.*
- *Evidence that you have kept up to date with your practice by completing various training courses, including in the areas of concerns.*
- *Various positive references provided in relation to your work as a registered nurse including very positive oral evidence from Ms 7 as to your professionalism and your seriousness in addressing the issues which had arisen.*

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that there remains a risk of repetition and that you are currently impaired on both public protection and public interest grounds. The panel therefore determined that it would neither protect the public nor be in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that 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:

'Conditions may be appropriate when some or all of the following factors are apparent:

- *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 was of the view that the misconduct identified in this case could not be addressed through retraining as the concerns are not related to your clinical practice. Rather, the concerns are attitudinal in nature. The panel determined that, given the seriousness of the concerns and its attitudinal nature, there are no practicable or workable conditions that could be formulated. It noted that you are currently on the DBS Child and Adult Barred list and therefore, a conditions of practice order would not be practicable. Consequently, the panel decided that a conditions of practice order would not adequately protect the public nor be in the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *…….;*
- *……..'*

The panel acknowledged that when considering this case in isolation, it was a single instance of misconduct. However, it noted that you had been struck off the register in 2009 for concerns of a far more serious nature which had in common with this instance of misconduct, a failure to treat patients with dignity and respect. The panel took into account that you had practised unrestricted as a registered nurse between September 2019 and October 2020, with no further concerns raised about your nursing practice. In this regard, it noted the various positive references made on your behalf and the oral evidence of Ms 7 who gave a positive account of your professionalism and compassionate practice whilst working as a registered nurse between September 2019 and October 2020. The panel also noted that you had demonstrated some insight in your reflective statement, albeit limited, and had completed various training courses, including in the areas of concern.

Therefore, the panel was of the view that although the concerns are attitudinal in nature, there was no evidence before it to indicate any harmful deep-seated attitudinal problems in this case. Furthermore, whilst the panel had, for the reasons previously stated in its impairment decision, found that there was a risk of repetition, nonetheless, you had demonstrated some insight (albeit not complete at this stage) and therefore in the panel's judgement, you do not pose a significant risk of repetition.

The panel carefully considered the submissions of Mr Badruddin in relation to the imposition of a striking-off order in this case. It also considered following paragraphs of the SG with respect to imposing a striking-off order:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

However, in taking account of all the evidence before it, including the seriousness of your misconduct, the steps you had taken to strengthen your nursing practice and the positive testimonials on your behalf, the panel concluded that a striking-off order would be disproportionate. Although your misconduct raises questions about your professionalism, it was, in the panel's view, not to the extent that required your removal from the register. There was evidence, since the incidents, of you practising safely and effectively such that the panel was content that a striking-off order would be unduly punitive and disproportionate, and therefore, not the appropriate sanction. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in this case to impose a striking-off order. It was of the view that a striking-off order could deprive the public of a registered nurse who has the potential to return to nursing practice in the future. Therefore, a striking-off order would not serve the public interest considerations in this case.

Consequently, the panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register and that public confidence in the nursing profession could be maintained if you were not removed from the register.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction to protect the public and address the public interest in this case. It was satisfied that a suspension order for a period of twelve months would provide you with an opportunity to demonstrate evidence of sufficient insight into your misconduct and that your fitness to practise is no longer impaired. The panel determined that this order is necessary to protect the public, mark the seriousness of the misconduct, maintain public confidence in the profession, and send to the public and the profession, a clear message about the standard of behaviour required of a registered nurse.'

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, your bundle including your reflective piece, testimonials, and training certificates. It also considered representations made by Mr Padley on your behalf and submissions made by Ms Kay on behalf of the NMC.

Ms Kay outlined the procedural background to the case. She told the panel that a substantive hearing took place from 23 January 2023 to 31 January 2023, where the panel imposed a 6 month suspension order. This order was reviewed on 21 July 2023 where the panel imposed a further 6 month suspension order. However, appeal proceedings at the High Court, brought by the Professional Standards Authority (PSA), took place on 20 November 2023 where the decision of the original panel was quashed in relation to impairment and sanction. The case was remitted and a further substantive hearing took place on 2 April 2025 to 4 April 2025, where the panel imposed a suspension order of 12 months.

Ms Kay directed the panel to a background of the case, and the charges found proved. She submitted that the previous panel found your fitness to practise was impaired on public protection and public interest grounds. Ms Kay submitted that the previous panel found that you had demonstrated developing insight into the matters found proved, but you demonstrated limited insight into your conduct, and the panel was concerned that the issues identified were of an attitudinal nature. Further, Ms Kay submitted that the misconduct occurred within two years of being restored to the register, after previously being struck off in 2009 which involved a serious similar matter.

Ms Kay acknowledged the evidence of training, reflection and testimonials provided by you in regard to the review hearing today. Ms Kay submitted that as the concerns are attitudinal in nature, this can be very difficult to effectively remediate, particularly as the facts of this case are very serious. Further she submitted that you have not worked as a nurse in over four years.

In conclusion, Ms Kay submitted that the NMC is aware that you are listed on the DBS barred list which restricts you from working in a healthcare setting, and in light of this, the NMC is seeking a suspension order for the period of 12 months.

Mr Padley submitted that the proposed and agreed position by you and the NMC is a suspension order for a further 12 months. He told the panel that you are on the DBS barred list for the same allegations which the NMC considered, some of which were found not proved, and that it is your intention to request removal from the DBS barred list so that you may return to practice. Mr Padley told the panel that this is not a simple task, and that due process must be followed and correct steps must be taken.

Mr Padley submitted that a phased return to nursing is your goal, and to achieve this you must first move towards a lesser sanction such as a conditions of practice order. This would not be workable currently due to the nature of you being on the DBS barred list, and so Mr Padley submitted that the right and proper disposal for todays hearing should be a 12 months suspension order to afford you the time to address the DBS barring.

Mr Padley directed the panel to the evidence of training, reflection and testimonials provided by you. He submitted that you acknowledge that you made a serious error of judgement, have made mistakes and you show a greater level of insight into matters found proved. Further, he submitted that you are ambitious to return to practice and you understand that steps must be taken in the right order to make progress.

In conclusion, Mr Padley submitted that you acknowledge that it is not practical to move to a conditions of practice order today due to you being barred by the DBS, but it is your ambition to deal with it appropriately so that you can move to a conditions of practice order in the future. Mr Padley submitted that a DBS tribunal is likely to take some time to progress and in light of this a 12 month suspension order is requested today.

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 noted that you were struck off the register in 2009, and were subsequently restored and returned to practice. The panel considered that you worked autonomously for a period of a year before your DBS barring, and that the incidents found proved occurred two months into your first nursing role after being restored to the register.

The panel noted that the original panel found that you had developing insight. At this hearing, the panel took into account your reflective piece, evidence of training and testimonials. While the panel acknowledges that you have demonstrated increased insight into how your actions impacted both the patient and the wider nursing profession, there remains a need for further in-depth reflection on the underlying reasons for your decision to record the patient and share this with a colleague.

The act of recording a patient and then disclosing that recording raises serious concerns regarding professional boundaries, patient dignity, and confidentiality. It is essential that

that you engage in deeper reflection to fully understand the motivations behind your actions and the reasons why they would be unlikely to be repeated in the future.
A thorough exploration of these aspects is necessary to ensure that you can demonstrate a sustained commitment to upholding professional standards and public protection, mitigating any risk of recurrence, and rebuilding trust in your ability to practise safely, kindly and professionally. This is particularly as you have previously been struck off in relation to concerns of a similar but more serious nature. The panel considers this level of reflection and personal accountability crucial before determining whether full remediation has been achieved.

The panel also acknowledged the steps you have undertaken to address the concerns raised by way of training courses. However, it was mindful that the charges that were found proved were not related to your clinical practice and performance but rather your attitude and conduct with a patient and colleague. Therefore, the panel determined that you have not fully demonstrated that you have addressed the concerns identified with your misconduct.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account that you have not worked as a nurse in over four years due to the DBS barring, and so you have not been able to demonstrate how you have embedded your developing insight and learning into safe practice.

The panel determined that the matters found proved are remediable, however, it was of the view that you have not fully demonstrated insight into your conduct. In light of this, this panel determined that you are 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 light of you being subject to a DBS barring order, 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 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 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 bore in mind the seriousness of the facts found proved at the original hearing and concluded that although conditions of practice order could potentially be formulated to adequately protect the public and satisfy the public interest, your DBS barring restricts you from working in a nursing capacity. Therefore, the panel was not able to formulate workable conditions of practice that would be practical and appropriate.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings and to address your DBS barring. The panel concluded that a further 12 months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight, and deal with your DBS barring appeal. It considered this to be the most appropriate and proportionate sanction available. The panel noted that if your DBS appeal was successful, either party may request an early review of this order.

The panel was of the view that a striking off order would be disproportionate at this time as it had no information before it to suggest that it is necessary.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 2 May 2025 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.

Any future panel reviewing this case would be assisted by:

- Your engagement and attendance at any future review hearing.
- An updated reflective statement demonstrating sufficient insight as to your misconduct and the panel's findings including the underlying reasons for your decision to record the patient and share this with a colleague, the motivations behind your actions and the reasons why they would be unlikely to be repeated in the future, particularly as your fitness to practise has been found to be impaired on two separate occasions.
- Any references or testimonials attesting to your capability to perform your duties, in whatever role, professionally in any paid or unpaid work subsequent to this hearing.
- Any relevant training courses undertaken in the areas of concern subsequent to this hearing.

This panel notes that a future panel may also be assisted by having sight of your reflective statement produced for this hearing.

This will be confirmed to you in writing.

That concludes this determination.