

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

**Substantive Order Review Hearing
Friday, 09 January 2026**

Virtual Hearing

Name of Registrant: Mr Paul Andrew Devine

NMC PIN: 9811305S

Part(s) of the register: Registered Nurse – Sub Part 1
Children’s Nursing – October 2001

Relevant Location: Scotland

Type of case: Lack of competence

Panel members: Simon Banton (Chair, Lay member)
Jessica Read (Registrant member)
Ray Salmon (Lay member)

Legal Assessor: Fiona Barnett

Hearings Coordinator: Aisha Charway

Nursing and Midwifery Council: Represented by Beverley Da Costa, Case Presenter

Mr Paul Andrew Devine: Present and represented by Christie Wishart, instructed by Thompsons Solicitors

Order being reviewed: Conditions of practice order (2 years)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry on 9 February 2026 with a finding of impairment in accordance with Article 30 (1)**

Decision and reasons on review of the substantive order

The panel decided to allow the substantive conditions of practice order to lapse upon expiry on 9 February 2026 with a finding of impairment in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This order will come into effect at the end of 9 February 2026 in accordance with Article 30(1) of the Order.

This is the third effective review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 11 December 2020 by way of Consensual Panel Determination. This was reviewed on 4 January 2022 and replaced with a conditions of practice order for 24 months. The order was then scheduled for an early review on 22 September 2023 which was adjourned. This was reviewed on the 4 January 2024, and the panel imposed a further conditions of practice order for 24 months. The current order is due to expire at the end of 9 February 2026.

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 failed to demonstrate the standards of knowledge, skill and judgment required to practise without supervision as a Band 5 nurse in that:

1. On 25 April 2017 in respect of baby C:

- a. You switched off the red urgent alarm on baby C's heart rate/oxygen saturation monitor.*
- b. You failed to recognise that baby C's oxygen saturation levels had fallen and that this required urgent attention.*

2. *On 28 June 2017 in respect of baby D:*
 - a. *You removed baby D from the incubator without providing supplemental oxygen.*
 - b. *You failed to recognise that baby D's oxygen saturation levels had fallen and that this required urgent attention.*

3. *Between around 22 March 2017 and early August 2017 failed to successfully complete all of an extended stage 1 formal capability programme implemented to improve your practise in that you:*
 - a. *Failed to pass the objective requiring you to demonstrate attention to detail when undertaking clinical care of babies.*
 - b. *Failed to pass the objective requiring you to demonstrate an ability to plan, implement, evaluate and document the nursing care needs of the baby working within unit guidelines.*
 - c. *Failed to pass the objective requiring you to provide safe, effective patient centred care.*

4. *On 15 August 2017 in respect of baby E:*
 - a. *You removed baby E from the incubator without providing supplemental oxygen.*
 - b. *You failed to recognise that baby E's oxygen saturation levels had fallen and that this required urgent attention.*

5. *Between early August 2017 and late August 2017 failed to successfully complete a stage 2 continuing formal capability programme implemented to improve your practise in that you:*
 - a. *Failed to pass the objective requiring you to demonstrate attention to detail when undertaking clinical care of babies.*

- b. Failed to pass the objective requiring you to demonstrate an ability to plan, implement, evaluate and document the nursing care needs of the baby working within unit guidelines.*
- c. Failed to pass the objective requiring you to provide safe, effective patient centred care.'*

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

The panel acknowledged the new information put before it which consists of a reflective statement, a description of your current role, a reference which appears to be from your superior, (albeit it does not state their role and whether they are aware of the NMC proceedings) and email correspondence with two universities confirming you cannot secure a place on a Return to Practice Course with them.

The panel noted you have achieved a Masters degree in Healthcare Management and have been working as a Healthcare Assistant and Care Practitioner since 2020 and the positive reference given on your behalf. The panel acknowledged your current role includes dispensing medications to residents, carrying out blood glucose checks, palliative care and manages a small team of Care Assistants.

The panel noted the NMC's position that conditions of practice are in place to address the specific concerns which were found proved by admission and acknowledged the submissions of Ms Wishart that you are unable to secure a place on a Return to Practice Course due to the conditions imposed and that there appear to be no paediatric return to practice courses available to you. The panel took account of Ms Wishart's submissions that the order be allowed to lapse, which would then allow you to attend a twelve week Return to Practice Course and reapply for NMC Registration.

You were asked whether any other courses were available for a return to paediatric nursing and you stated Chester University was the only one. However, there was no evidence of this before the panel and it was not satisfied that you have made sufficient enquiries into the availability of paediatric return to practice courses. It concluded there is insufficient evidence, other than your anecdotal comment, that you carried out an online search into this most important matter.

The panel had regard to your reflective statement. It appears to demonstrate insight, responsibility and an understanding of the impact of your mistakes on patients, colleagues and the wider public. It noted that prior to these concerns you state you were a competent nurse. However, the panel noted that the lack of competence issues appear to date back to 2011 when you were placed on a stage 1 action plan which was not completed by 2015. [PRIVATE] The first incident occurred in April 2017, and there were repetitions of the same errors with a further two babies in June and August 2017.

The panel considered the NMC Guidance on how fitness to practice allegations and findings are treated as part of readmission applications and had particular regard to the following section:

'Where there is a previous finding of impairment against the nurse or midwife

If a nurse or midwife's registration lapsed after a fitness to practise panel found their fitness to practise to be currently impaired, but took no further action, the Registrar can take this into account if the nurse or midwife applies for readmission. In doing so, the Registrar will consider the panel's decision, and the reasons for it, when deciding whether the nurse or midwife:

- is capable of safe and effective practice as a nurse or midwife, in accordance with Article 9(2)(b) of the Order;...*

As part of this consideration, the Registrar can ask the nurse or midwife to show what they have done to improve their practice and reduce any outstanding risk.'

The panel determined that although you have demonstrated insight and that you have been working as a Healthcare Assistant in a care home setting, this is not sufficient to address the concerns, which took place in a paediatric neonatal environment. They are therefore of limited relevance to the concerns about your practice. It determined you have not sufficiently addressed the specific concerns. It noted that you did not successfully complete any performance improvement plans prior to 2017 and there is no information to suggest that you have strengthened your practice in a neonatal setting. There is therefore no documentary evidence before it to suggest your competency has improved.

The allegations found proved are very serious, repeatedly putting highly vulnerable patients at risk, breaching fundamental tenets of nursing and failing to learn from your mistakes. 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 due to lack of competence 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 public would expect a paediatric nurse to be competent in basic nursing skills and to learn from mistakes rather than repeating them. 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 last 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 lack of competence was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the serious allegations found proved. 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 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 is not satisfied that you have done as much as you can to address the concerns. Your current area of work does not enable you to address the specific concerns which would allow the order to lapse.

The panel considered the mechanism put forward by Ms Wishart. It understood that if it allowed the conditions of practice order to lapse

you might be able to secure a place on a Return to Practice Course and apply to rejoin the Register. The Registrar would then have the power to review the case including what steps you have taken to strengthen your practice. However, the panel determined that allowing the order to lapse would not address the public interest element of this decision, including maintaining public confidence and upholding the standards and reputation of the nursing profession. Given the seriousness of your lack of competence over a prolonged period of time in which you repeated similar mistakes, there is a risk of repetition. There is no evidence of remediation of the specific areas of concern which would demonstrate that the risks have reduced.

The panel had regard to NMC guidance Conditions of practice order SAN-3c which states:

‘ [Conditions of practice] must strike a fair balance between the interests of the nurse, midwife or nursing associate and the public interest. This also includes public protection and public confidence;’ and

‘Although return to practice courses and the test of competence may provide relevant evidence that a panel can take into account at a hearing or a review, they are not designed to address specific concerns about a nurse or midwife’s fitness to practise.’

The panel was of the view that a conditions of practice order remains sufficient to protect patients and meet the wider public interest. In this case, there are conditions in place that can adequately address the concerns and would protect patients during the period they are in force.

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 there is no evidence to suggest the risk of harm has increased since the last review.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 24 months, which will come into effect on the expiry of the current order, namely at the end of 9 February 2024. This will allow you time to identify and complete a Return to Practice Course and find employment which will allow you to demonstrate you have strengthened your practice in the required area. The option of requesting an early review remains available to you if there is a material change in circumstances.

The panel 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 carry out care in a neonatal unit.*
- 2. You must limit your nursing practice to one substantive employer, which must not be an agency.*
- 3. You must ensure that you are directly supervised at all times by another registered nurse of a band 6 or above until you are deemed competent by a registered nurse of band 6 or above on the following concerns:*
 - a) Recognising and responding to deteriorating patients;*
 - b) Delivering appropriate care in relation to patient’s conditions;*

- c) *Maintaining safe and effective care; and*
- d) *Demonstrating the ability to work within the range of the nursing process (assessing, planning, implementing, and evaluating care).*

Once deemed competent, you must at all times work on the same shift as, but not always directly supervised by another registered nurse.

- 4. *You must keep your work under review. You must immediately limit or stop your practice if you are advised to by:*
 - a) *Your general practitioner.*
 - b) *Any other registered medical practitioner or therapist responsible for your care.*

- 5. *You must work with your line manager, or their nominated deputy or supervisor to create a personal development plan (PDP). Your PDP must address the following concerns:*
 - a) *Recognising and responding to deteriorating patients;*
 - b) *Delivering appropriate care in relation to patient's conditions;*
 - c) *Maintaining safe and effective care; and*
 - d) *Demonstrating the ability to work within the range of the nursing process (assessing, planning, implementing and evaluating care).*

You must:

- a) *Send your case officer a copy of your PDP before the next review hearing or meeting.*

- b) Meet with your manager or nominated deputy at least every fortnightly to discuss your progress towards achieving the aims set out in your PDP.*
- c) Send your case officer a report from your manager or nominated deputy before the next review hearing or meeting. This report must show your progress towards achieving the aims set out in your PDP.*

6. You must keep a reflective practice profile. The profile will:

- a) Detail cases that you have been involved with which demonstrates your ability to address the issues identified in paragraph 3.*
- b) Set out the nature of the care given.*
- c) Be signed by another registered nurse each time.*
- d) Contain feedback from your supervisor on how you gave the care.*

You must send your case officer a copy of the profile before the next review hearing or meeting.

7. 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.*

8. 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.*

9. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any employers you apply to for work (at the time of application).*
 - c) *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.*

- *A future reviewing panel would be assisted by:*
- *Documentary evidence of further steps you have taken to secure a place on a return to practice course, including attempts to identify any other providers and any responses received;*
- *Up to date references which state the role of the referee and that they are aware of NMC proceedings;*
- *Details of any courses or training you have undertaken in the areas of concern identified; and*
- *Up to date employment details.'*

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 impairment as to whether a Nurse can currently practice kindly, safely and professionally. 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 response bundle. It has taken into account the submissions made by Ms Da Costa on behalf of the NMC who submitted that there has been no change in the circumstances relating to you addressing your lack competence. Ms Da Costa stated however, that it was not possible for you to remediate as condition 1 forbids you from working in the area you are registered in, and thereby it was not possible for you to provide evidence of remediation.

Ms Da Costa further submitted that owing to this there was still a risk of repetition and thereby a risk of harm to patients. On behalf of the NMC she submitted that a finding of impairment is necessary on the grounds of both public protection and public interest. She noted that members of the public would be alarmed if there was not a finding of impairment, and especially as you have been out of practice as a registered nurse for a number of years.

In relation to sanction she submitted that it was a matter for the panel to consider. She noted that the previous panel requested that you should provide documentary evidence to a future reviewing panel of further steps taken to secure a place on a Return to Practice Course. She referred the panel to the response bundle provided at today's hearing evidencing this.

The panel also had regard to submissions from Ms Wishart on your behalf, she submitted that you are unable to complete a Return to Practice Course due to the current conditions of practice order in place.

Ms Wishart submitted that you are still impaired, as you have not been able to provide evidence of a period of safe practice at today's hearing. She informed the panel you are currently registered with the Scottish Social Services Council which is similar to the NMC in that you are subject to their registration standards.

Ms Wishart made reference to the *NMC Guidance Rev-2h on Lapse with Impairment*:

A panel will allow a professional to lapse with impairment where:

- *the professional would no longer be on the register but for the order in place³;*
- *the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- *a striking off order isn't appropriate.*

She submitted that you had only remained on the register due to the order in place and the length of it. She informed the panel that in your response bundle it included correspondence from the University of Chester, which confirmed that it would not accept you on to a Return to Practice Course owing to your conditions of practice order. She further noted that this university was the only establishment you could attend in order for you to take the course. Ms Wishart further submitted that you could not do anything more to enable your return to practice.

Ms Wishart suggested that by allowing this order to lapse with impairment it would satisfy the NMC's concerns about upholding trust in the regulator. She further stated that it would be fair to you and allow you to recommence your career as you do not need to be registered to complete a return to practice course. She further noted that once you have completed this course you could re-apply to the register and that you were keen to do this.

Ms Wishart submitted that had a striking off order been imposed at the time of the first substantive hearing, you would now have likely returned to practice. She submitted that a striking off order now is not appropriate and would have a punitive effect in that it would be akin to punishing you twice.

Ms Wishart further submitted that if the panel would not consider allowing the order to lapse on expiry, an alternative consideration would be that the current conditions of practice be amended and condition 1 removed in its entirety. She stated that the current conditions of practice order prohibits you from enrolling on to a Return to Practice course. Ms Wishart suggested to the panel, that should the conditions order be allowed to lapse this would allow you to enrol on to a Return to Practice course.

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 was of the view that you are still currently impaired. It noted that you were unable to remediate the concerns regarding your lack of competence. It acknowledged that this was due to the current restrictive conditions to your practice, specifically condition 1 which did not allow you to practice in the part of the register you qualified in.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. The panel considered the questions regarding impairment from the case of *Cohen v. General Medical Council (GMC)* (2008) EWHC 581 (Admin)

1. Whether the conduct that led to the charge(s) is easily remediable

2. Whether it has been remedied

3. Whether it is highly unlikely to be repeated

The panel agreed that the charges found proved by the original panel were remediable but that you were unable to address your lack of competence owing to the restrictions already identified. The panel gave you credit for your loyalty to the healthcare profession and your dedication to improving your skills in other areas, notably in the care home sector.

Notwithstanding, as you have not had the opportunity to address the concerns regarding your lack of competence, this panel determined that you are still liable to repeat matters of the kind found proved. It further noted that due to the vulnerable nature of the patients that were affected by your lack of competence, 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(1) of the Order. The panel also took into account the 'NMC's Sanctions Guidance' (SG) and bore 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 it should allow the order to lapse on expiry without imposing a sanction. The panel had regard to NMC guidance 'REV-2h' and its overview comments specifically:

*"While Suspension Orders and Conditions of Practice Orders can be varied or extended, **they are not intended to exist indefinitely**"*

The panel considered that this situation now exists and could not endure. It went on to direct the Conditions of Practice Order to lapse with impairment. The panel noted that the guidance further stated:

A panel will allow a professional to lapse with impairment where:

- *the professional would no longer be on the register but for the order in place.*

- *the panel can no longer conclude that the professional is likely to return to safe unrestricted practice within a reasonable period of time;*
- *a striking off order isn't appropriate.*

In relation to the first point the panel acknowledged that you would no longer be on the register were it not for the conditions of practice order being in place.

In relation to the second point the panel acknowledged that you have taken significant steps to remain in the healthcare profession in that you have been working as a healthcare assistant for the past 5 years. It further noted that you are intending to undertake a Return to Practice Course, however due to the current restrictions you are unable to enrol, you provided communication from a university confirming this. In the circumstances, the panel concluded that you are unlikely to return to safe unrestricted practice within a reasonable period of time.

In relation to the third point the panel considered that a striking off order was not appropriate. This was due to the nature of the concerns relating to a lack of competence, which could be easily remedied. The panel found however that your lack of progress in this matter is attributable wholly or in significant part to matters outside of your control rendering a striking off order a disproportionate consequence of the charges found proved against you.

The panel bore in mind the NMC's overarching objective which is to protect the public, maintain public confidence in the profession and uphold proper standards of conduct. Should you want to rejoin the register, you must clear the high threshold demanded and demonstrate to the Registrar that you have addressed the concerns previously highlighted and remediated to such an extent, that they are persuaded that you are no longer a risk to the public. The panel noted that this would address both the public interest and public protection concerns.

The panel decided that the appropriate and proportionate action is to allow the substantive conditions of practice order to lapse upon expiry on 9 February 2026 with a finding of impairment in accordance with Article 30(1).

This will be confirmed to you in writing.

That concludes this determination.