

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

**Substantive Order Review Hearing
Tuesday, 16 April 2024**

Virtual Hearing

Name of Registrant: Jo Mullen

NMC PIN 02F0413O

Part(s) of the register: Registered Nurse – RN1, Adult Nurse (June 2002)

Relevant Location: London

Type of case: Misconduct & Lack of competence

Panel members: John Vellacott (Chair, lay member)
Deepa Leelamany (Registrant member)
Paul Leighton (Lay member)

Legal Assessor: Laura McGill

Hearings Coordinator: Muminah Hussain

Nursing and Midwifery Council: Represented by Mohsin Malik, Case Presenter

Ms Mullen: Present and represented by Thomas Buxton, instructed by Royal College of Nursing (RCN)

Order being reviewed: Conditions of practice order (9 months)

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect immediately in accordance with Article 30(2)**

Decision and reasons on review of the substantive order

The panel decided to replace the current conditions of practice order with a suspension order.

This order will come into effect immediately in accordance with Article 30(2) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the third review of a substantive conditions of practice order originally imposed for a period of 4 months by a Fitness to Practise Committee panel on 25 February 2022. This was reviewed on 17 June 2022 and the reviewing panel extended the conditions of practice order for a period of 12 months. The last reviewing panel confirmed the conditions of practice order for a period of 9 months.

The current order is due to expire at the end of 28 April 2024.

The panel is reviewing the order pursuant to Article 30(2) 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 8 August 2019 failed to take hourly observations of Patient A who had a recorded NEWS score of 6 at 13:15 hours;

2) On 8 August 2019 at around 15:15 hours altered observations on Patient A's notes which had been recorded by Colleague A:

a. Respiratory rates;

b. NEWS total from 6 to 4;

[...]

4) *On 8 August 2019 you tried to pull the observation chart out of Colleague A's hands;*

[...]

6) *On 8 August 2019 asked Colleague A on one or more occasions not to raise a complaint about yourself;*

[...]

8) *Your actions in charge 6 showed a lack of integrity in that you put concern for yourself above the interests of a patient.*

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

Charges 2a, 2b and 6 were found proved by your admission.'

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

'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 Mullen's fitness to practise remains impaired.

The panel noted that the last panel found that Ms Mullen had developing insight. At this hearing the panel had concerns in relation to Ms Mullen's insight and determined it remains developing. The panel particularly noted Ms Mullen's updated reflective piece which she provided for this hearing stated:

...“Due to my transparency I maintain that I upheld my integrity throughout the experience.”...

The panel considered that Ms Mullen’s insight does not fully address the issues of how her actions put patients at a risk of harm, nor has she fully appreciated the seriousness of her failings and the potential risks of her actions. The panel therefore concluded that Ms Mullen’s reflective piece did not thoroughly address the issues identified by condition 3b) of the conditions of practice order, namely ‘your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care’.

In its consideration of whether Ms Mullen has taken steps to strengthen her practice, the panel noted that she has not undertaken relevant training courses or any recent clinical observations for nurses and documentation and record keeping, since the last review hearing.

The panel had regard to the RCN’s submissions and noted that Ms Mullen has not worked as a registered nurse since the conditions of practice order was imposed. However, the panel has no indication to whether Ms Mullen has been seeking employment or if she wishes to return to practice. In light of this, the panel concluded that Ms Mullen has not yet been able to demonstrate that she can practice unrestricted and safely as a registered nurse.

The last panel determined that a risk remained that Ms Mullen was liable to repeat matters of the kind found proved. Today’s panel has received no new information to demonstrate this risk of repetition has been diminished. In light of this, this panel determined that Ms Mullen is still 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 Mullen's fitness to practise remains impaired.'

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

'Having found Ms Mullen'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 ongoing public protection issues identified, an order that does not restrict Ms Mullen's practice would not be appropriate in the circumstances because it would be insufficient to protect the public until she can demonstrate that the failings identified by these charges have been fully addressed and that she is in a position to return safely to unrestricted clinical practice.

The panel next considered whether imposing a further conditions of practice order on Ms Mullen'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 next considered whether imposing a further conditions of practice order on Ms Mullen's registration would still be a sufficient and appropriate response. It noted that the NMC submitted that this would be the appropriate sanction, and that Ms Mullen would not oppose this, recognising that she has not yet been able to comply fully with the original conditions. 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 accepted that Ms Mullen has been unable to comply with conditions of practice due to her current employment status, but she continues to engage with the NMC and is willing to comply with any conditions imposed.

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 Mullen's case because this would remove the opportunity for her to return to nursing and demonstrate safe practice.

Accordingly, the panel determined, pursuant to Article 30(2)(c) to make a conditions of practice order for a period of 9 months, which will come into effect on the expiry of the current order, namely at the end of 28 July 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 limit your nursing practice to a single employer. This may be permanent employment or through an agency.*
2. *You must remain under the direct or indirect supervision of a Band 6 nurse or above any time you are working. Your supervision must consist of your supervisor reviewing a minimum of 10 patients' observation charts each month, 50% of which should include NEWS scores.*
3. *You must develop a personal development plan (PDP) in relation to condition 2 above. The log must:*
 - a) *Contain the dates that you carried out each set of observations and be signed by a supervisor on that shift to confirm the charts have been completed correctly and/or identify any errors.*
 - b) *You must write a reflective piece which demonstrates your understanding of the importance of integrity in the nursing profession and the workplace and its impact on patient care. This should also contain further reflection of your understanding of the panel's findings and what steps you have taken to strengthen your practice.*

You must send your case officer a copy of the log prior to the next review 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 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 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 9 months.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In

considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle, and written responses from you. It has taken account of the submissions made by Mr Malik on behalf of the NMC and Mr Buxton on your behalf.

Mr Malik outlined the background of the case to the panel. He informed the panel that your recent NHS employer (the Trust) was not aware of your conditions of practice order and has raised new clinical concerns. These include:

- Failing to inform the NMC that you had signed a contract with an agency which is a breach of condition 4
- Failing to give a copy of your conditions to the Trust, which is a breach of condition 6(a)
- Working at the Trust without supervision which is a breach of condition 2

Mr Buxton referred the panel to your statement which was prepared for the purposes of the hearing, and submitted that you do not dispute that your fitness to practice remains impaired. He informed the panel that you have indicated insight in that you have taken steps to remediate. Mr Buxton submitted that whilst admitting breaches in respect of conditions, you have given a full explanation as to how that occurred.

Mr Buxton referred the panel to your reflection dated 14 April 2024 and your training certificates. He submitted that you have been practicing as a nurse for many years and are a committed and passionate nurse. Mr Buxton informed the panel that this has been your first and only regulatory intervention and in the course of your career, you have provided safe and effective practise.

Mr Buxton submitted that the concerns which resulted in a substantive order in 2020 have not been repeated.

Mr Buxton informed the panel that you admit to failing to inform the NMC you had signed a contract with an agency and this was a complete oversight. He submitted that this was not deliberate nor dishonest.

Mr Buxton moved on to condition 2 which states:

2. *'You must remain under the direct or indirect supervision of a Band 6 nurse or above any time you are working. Your supervision must consist of your supervisor reviewing a minimum of 10 patients' observation charts each month, 50% of which should include NEWS scores. '*

He referred the panel to your statement dated 14 April 2024:

'I partially admit this concern. I found this condition a little ambiguous and open to interpretation. Indirect supervision to me means there must be a Band 6 or above on the shift that we are accountable to.

I always worked under the indirect supervision of a Band 6 or a Band 7. I was never in charge of a shift myself. I always had supervision.

I didn't understand that I had to disclose my Conditions of Practice order to every clinical area that I worked in. Given the opportunity again I would have disclosed to the clinical areas the condition so that they were aware and could monitor my practice.'

In regard to condition 6(a), Mr Buxton informed the panel that no patient harm has arisen.

Mr Buxton referred the panel to the email from Nurse Manager 1 dated 27 February 2024, specifically:

'My conclusion was that JM did not appear to understand or comprehend the severity of failing to communicate or comply with the restrictions on her practice placed on her by the NMC and continued to be dismissive and or confused about the NMC requirements to remain on register .'

Mr Buxton submitted that you did comprehend the severity of failing to communicate the restrictions on your practice, albeit there was some confusion on your behalf.

Mr Buxton referred the panel to the testimonials that were given to the original substantive panel. He submitted that you had never had any complaints raised prior to 2019.

Mr Buxton referred the panel to your reflective piece dated 14 April 2024:

'It wasn't my intention to mislead the Agency. This wasn't a deliberate act. As I had not familiarised my Conditions of Practice order for some time I misconstrued the details. Over time I had come to believe I only had to submit ten News scores to the NMC not ten per month. This is my oversight.'

Mr Buxton submitted that you were in error which you accept but these were not dishonest actions or acts which lack integrity.

Mr Buxton referred to your statement in your reflective piece dated 14 April 2024:

'I wish to continue my career as a Nurse. I love what I do, caring for people and assisting them in returning to full health. I have been nursing for almost forty years and I have dedicated my life to the profession. There are not many nurses still working with my breath of experience and I feel it would be a loss to the profession if I was taken off the register. It's important that I correct my failings in practice so that I can practice safely again.

I would be very sad and disappointed if I couldn't practice anymore.'

Mr Buxton also referred the panel to your reflection on the incidents that took place in 2019 and submitted that the substantive order arose for the first time in your long career. He submitted that there is no evidence of similarity between the concerns raised now, with the concerns raised in 2020.

Mr Buxton submitted that a conditions of practice order remains appropriate, and whether it should be varied is up to the panel. He asked the panel to give you one last chance with a condition of practice order.

Mr Malik referred the panel to the original substantive hearing panel's observations on impairment as well as the last reviewing panel's observations. He informed the panel that there is new information which suggests that you have not complied with the conditions of practice order and the new concerns which have been raised and are similar in nature to the original concerns found proved.

Mr Malik referred the panel to the email written by Nurse Manager 1 in February 2024 which states:

'When discussed JM appeared to show no concern or accountability to the patient in her care and was dismissive that the deterioration was in part due to JM's failure to monitor the patient's ...'

Mr Malik informed the panel that the previous panel's recommendations were:

- Your continued engagement with the NMC, including attendance at any review of this order;
- Evidence of compliance with the conditions of practice order;
- Evidence of attempt to secure employment;
- Testimonials from any paid or unpaid employment, and;
- If you had not secured any employment before the next review of this order.

Mr Malik submitted that the first recommendation had been complied with as you have attended today and have engaged with the NMC. In terms of the second recommendation, Mr Malik submitted that there is clear evidence before the panel and admissions that you have not complied with your conditions.

Mr Malik submitted that in terms of your reflection, there is evidence in the papers that you have reflected. He submitted that regarding evidence that you have kept up to date with

your knowledge and development in nursing practice, a list of articles and training certificates have been submitted.

Mr Malik submitted that the panel has not been provided with any new testimonials and you accept that you are impaired.

Mr Malik submitted that an order remains necessary on the grounds of public protection and is also necessary on the grounds of public interest. He submitted that considering the new referral that has been received, the information before this panel and the breach of conditions, the NMC is of the view that there is a risk of repetition just as the last panel found. Mr Malik invited the panel to impose a suspension order which is the appropriate and proportionate sanction in this case.

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 the last reviewing panel found that you had developing insight. At this hearing the panel determined that your insight remains developing. The panel noted that it had no information to suggest that you wholly accept your role in your wrongdoings and there is no insight from you to suggest that you accept that your actions may pose a risk to patient safety. It referred to the email from Nurse Manager 1, as previously quoted:

'When discussed JM appeared to show no concern or accountability to the patient in her care and was dismissive that the deterioration was in part due to JM's failure to monitor the patient's ...'

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account the additional training you have undertaken and you have provided the panel with certificates of these. The panel noted that you had not been able to work as a

registered nurse for a long period of time before this review took place, and that the information it has suggests that you could not comply with the conditions imposed on your practise.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved. Today's panel has received evidence of new concerns surrounding patient safety. Furthermore, that you did not comply with your conditions of practice order. The panel had regard to the 'NMC's Sanctions Guidance' (SG) on breaches of conditions and note this is a serious matter. 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 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 taken into account the 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 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 next considered the continuation of the current conditions of practice order. It determined that you had deliberately breached the last order, and referred to the NMC SG which states:

'If a nurse, midwife or nursing associate deliberately doesn't comply with an interim or substantive order this will be taken very seriously. This is because it is likely to show a disregard by that person for the steps the NMC has put in place to keep the public safe or uphold confidence in the professions.'

On this basis, the panel concluded that a conditions of practice order is no longer practicable or the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel determined therefore that a suspension order is the appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 9 months which marks the gravity of breaching conditions and the seriousness of your conduct. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will replace the current conditions of practice order with immediate effect in accordance with Article 30(2).

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 continued engagement
- Testimonials from any paid or unpaid work
- An updated reflective piece addressing the regulatory concerns to include monitoring vital signs and patient safety
- Any relevant training to keep your practice up to date

This will be confirmed to you in writing.

That concludes this determination.