

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

**Substantive Order Review Hearing
Thursday, 17 November 2022**

Virtual Hearing

Name of registrant:	Morag Bethune
NMC PIN:	95A0007S
Part(s) of the register:	Registered Nurse – Sub Part 1
Relevant Location:	Edinburgh
Type of case:	Lack of competence
Panel members:	Birju Kotecha (Chair, Lay member) Sharon Peat (Registrant member) Rachel Robertson (Lay member)
Legal Assessor:	David Swinstead
Hearings Coordinator:	Samiz Mustak
Nursing and Midwifery Council:	Represented by Yusuf Segovia, Case Presenter
Mrs Bethune:	Present and represented by Lauren Doherty of Anderson Strathern Solicitors
Order being reviewed:	Conditions of practice order (3 years)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (18 months) to come into effect at the end of 29 December 2022 in accordance with Article 30 (1)

Decision and reasons on review of the substantive order

The panel decided to confirm the current conditions of practice order.

This order will come into effect at the end of 29 December 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the sixth review of an order imposed by a panel of the Conduct and Competence Committee. The original order was one of suspension for a period of 12 months on 27 November 2014, extended for a further 12 months on 17 November 2015. This order was replaced by a conditions of practice order on 29 November 2016 for a period of 12 months, extended for a further 12 months on 8 December 2017 and 20 December 2018. This order was reviewed on 15 November 2019 and was extended for a period of 3 years.

The current order is due to expire at the end of 29 December 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

'That you, a Registered Nurse, whilst employed by NHS Lothian at the Royal Hospital for Sick Children, Edinburgh ("the Hospital"), whilst working on the Acute Receiving Unit on Ward 6 ("the Ward") between 9 May 2011 and 4 January 2013, failed to demonstrate the standard of knowledge, skill and judgement required for practise without supervision as a Registered Nurse in that you:

- 1. Failed to demonstrate the required skills in the administration of medication on, but not restricted to one or more of the occasions set out in Schedule 1 – proved by your admission*

2. *Failed to demonstrate the required skills in documenting the care given to patients on, but not restricted to one or more of the occasions set out in Schedule 2 – proved by your admission*
3. *Failed to demonstrate the required skills in communication on, but not restricted to one or more of the occasions set out in Schedule 3 – proved by your admission*
4. *Failed to demonstrate the required skills in delegating effectively tasks to colleagues on, but not restricted to one or more of the occasions set out in Schedule 4 – proved by your admission*
5. *Failed to demonstrate the required knowledge of medication practice on, but not restricted to one or more of the occasions set out in Schedule 5 – proved by your admission*
6. *Failed to demonstrate the required skills in clinical practise on, but not restricted to one or more of the occasions set out in Schedule 6 – proved by your admission*

And in light of the above your fitness to practise is impaired by reason of your lack of competence.

Schedule 1

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required skills in the administration of medication on, but not restricted to, one or more of the following occasions:

1. *On 21 June 2011 you administered an inhaler to an unnamed patient although the prescription had not been signed by a doctor*

2. *On 12 September 2011 you failed to administer an oral dose of prednisolone to an unnamed patient*

3. *On 30 September 2012 you failed to calculate the correct dose of azithromycin*

Schedule 2

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required skills in documenting the care given to patients on, but not restricted to one or more of the following occasions:

1. *On 20 June 2011 you failed to record on the corresponding fluid balance chart that you had given breakfast to an unnamed patient*

2. *On 22 June 2011 you failed to record the correct early warning score for an unnamed patient*

3. *On 26 June 2012 you failed to record a full set of observations for an unnamed patient*

4. *On 30 September 2012 you failed to complete a pressure ulcer chart of an unnamed patient*

Schedule 3

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required skills in communication on, but not restricted to one or more of the following occasions:

1. *On 13 September 2011 you failed to advise a senior colleague that an unnamed patient had an oxygen saturation level of 90%*
2. *On 6 January 2012 you failed to advise a senior colleague that an unnamed patient had a temperature of 39.5 degrees*
3. *On 14 June 2012 you failed to advise colleagues that an unnamed patient required a prescription for Vitamin K*
4. *On 18 June 2012 you failed to ask medical staff to review an unnamed patient*
5. *On 25 June 2012 you failed to correctly transcribe a prescribed dose of intravenous tobramycin for an unnamed patient*

Schedule 4

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required skills in delegating effectively tasks to colleagues on, but not restricted to one or more of the following occasions:

1. *On 31 January 2012 you failed to give direction to an unnamed student nurse to allow her to assist in the administration of medication*

Schedule 5

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required knowledge of medication practice on, but not restricted to one or more of the following occasions:

1. *You failed to demonstrate basic knowledge of intravenously administered medication on*
 - a) *31 January 2012*
 - b) *26 June 2012*
 - c) *9 October 2012*
2. *On 30 July 2012 you failed to demonstrate knowledge of how to assist in the preparation of an intravenous bolus of fluids*
3. *On 17 January 2012 you failed to demonstrate knowledge of how to check and/or administer a suppository to a patient*

Schedule 6

It is alleged that between 9 May 2011 and 4 January 2013, you failed to demonstrate the required skills in clinical practise on, but not restricted to one or more of the following occasions:

1. *On 31 July 2012 you failed to realise a nasogastric tube had not passed into an unnamed patient's stomach.'*

The fifth 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 had regard to your updated reflective statement. It finds that within the statement you continue to demonstrate full insight into your lack of competence. Further, the panel was encouraged by the fact that you remain

employed within the same role, by the same employer for over two years within a challenging caring environment.

However, as you have not yet been able to demonstrate safe practise as a registered nurse, the panel could not be satisfied that there would not be a repetition of the errors found proved at the substantive hearing. The panel therefore determined that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. However, the panel determined that a finding of impairment on public interest grounds is not required.

For these reasons, the panel finds that Mrs Bethune's fitness to practise remains impaired on public protection grounds only.'

The fifth 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 risk of repetition identified and seriousness of the case.

The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case.

The panel next considered the imposition of a conditions of practice order. The panel was of the view that a conditions of practice order is sufficient to protect patients. It determined that such an order would allow you a further opportunity to successfully secure a place upon a Return to Practice Course, commence employment as a registered nurse and begin evidencing compliance with the conditions.

Accordingly, the panel determined, pursuant to Article 30(1) (c) of the Nursing and Midwifery Order 2001, to make a further conditions of practice order for a period of three years, which will come into effect on the expiry of the current order. The panel determined that such a period is not to be construed as a more restrictive sanction. The period will allow you more flexibility and should you or the NMC wish to ask for an early review, then the order can be considered and reviewed at that time. It decided to impose the following conditions which it considered are still appropriate and proportionate in this case:

- 1. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse who is physically present in or on the same ward, unit, floor, or home that you are working in or on.*
- 2. You must not carry out medication administration unless directly supervised by another registered nurse until such time as you have been signed off as competent by your line manager who must also be a registered nurse. Any competency assessment must include the administration of medication and record keeping.*
- 3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) every week to review the adequacy of your clinical record keeping generally until such time as you are signed off as being competent.*
- 4. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practise*
 - 1. Medication administration*
 - 2. Record Keeping*

3. *Communication skills*
4. *Knowledge of clinical skills and procedures relevant to your role.*
5. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
6. *You must keep a personal log (at least weekly) about the development of your practice. This log is to be provided to the NMC before any NMC review hearing or meeting.*
7. *You must send a report from your line manager mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC before any NMC review hearing or meeting.*
8. *You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
9. *You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.*
- 10.a) *You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*

b) You must within 7 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

11. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (10) above, to them

- 1. Any organisation or person employing, contracting with or using you to undertake nursing or midwifery work*
- 2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services*
- 3. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment*
- 4. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).'*

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 a bundle provided by you which contained:

1. Your undated reflective statement;
2. An undated character testimonial from your current manager; and
3. A one-page record of current completed training.

The panel has also taken account of the submissions made by Mr Segovia, on behalf of the Nursing and Midwifery Council (“NMC”), and Ms Doherty, on your behalf.

Mr Segovia took the panel through the background of the case and referred it to the relevant pages within the bundle.

Addressing the panel first on updates since the last review, Mr Segovia drew the panel’s attention to the previous panel’s determination and informed the panel that at the time of the review, you had been in the process of applying for a place on a Return to Practice course specifically for Registered Sick Children’s Nursing (“the Course”). He informed the panel that you are yet to be admitted onto the Course, and therefore there has been no material change.

On this basis, Mr Segovia submitted that a finding of impairment is required on the ground of public protection. He submitted that without evidence of you having successfully completing the Course, there remains a risk of repetition and consequently a real risk of harm to the health, safety, and well-being of patients in your care as effective remediation of the concerns identified have not been demonstrated.

Addressing the panel on the ground of whether impairment was required in the wider public interest, Mr Segovia reminded the panel that on a previous review of this order, this ground had not been identified. However, he reminded the panel that as well as its duty to protect the public, the panel also has a duty to maintain public confidence and uphold proper standards. Mr Segovia therefore submitted that a finding of impairment on public interest grounds should also be considered.

In regard to sanction, Mr Segovia submitted that should the panel find impairment, then it is the NMC's position to ask that the order in its current form should be extended for a period of 18 months. He submitted that a further 18 months will allow you to comply with the conditions of practice order and complete the Course.

Ms Doherty submitted that you agree that the current order should be extended for a period of 18 months.

To assist the panel, Ms Doherty drew its attention to the NMC's guidance on substantive order reviews. She outlined that the panel should take the following into consideration when making its decision:

- *'Has the nurse, midwife or nursing associate complied with any conditions imposed? What evidence has the nurse, midwife or nursing associate provided to demonstrate this? What is the quality of that evidence and where does it come from?*
- *Does the nurse, midwife or nursing associate show insight into their failings or the seriousness of any past misconduct? Has their level of insight improved, or got worse, since the last hearing?*
- *Has the nurse, midwife or nursing associate taken effective steps to maintain their skills and knowledge?*
- *Does the nurse, midwife or nursing associate have a record of safe practice without further incident since the last hearing?*
- *Does compliance with conditions or the completion of required steps demonstrate that the nurse, midwife or nursing associate is now safe to practise unrestricted, or does any risk to patient safety still remain?'*

Ms Doherty addressed the panel on each consideration in turn.

Concerning consideration one, Ms Doherty told the panel that you have been employed as a support worker since 2013 and had worked in this position for your current employer via an agency until 2017 when you took up a permanent position. She told the panel that your role involves providing care to *'adults with complex needs and underlying health conditions'* whilst undertaking administrative and clinical tasks, daily personal care, recording and administration of medication and maintaining communication and a good working relationship with colleagues. Ms Doherty submitted that there is evidence before this panel to show that you have worked well within this environment and drew its attention to the undated testimonial from your manager. Ms Doherty invited the panel to consider the contents of the testimonial in its decision making.

Ms Doherty told the panel that it is accepted that this role is not exactly alike to a role of a registered nurse; however, she submitted that it enables you to engage in some similar and related activities. Ms Doherty further submitted that you are committed to nursing, as evidenced in your undated reflective statement and that this emphasises that you are dedicated to returning to nursing and securing a place on the Course.

Further, Ms Doherty told the panel that you are also now taking active steps to find a role within the NHS. She told the panel that in 2019, you had secured a place on the Course at the Glasgow Caledonian University ("GCU"); however, 1 week prior to starting the Course, the offer was withdrawn. Ms Doherty informed the panel you have since been enquiring at various other universities but have been unsuccessful in securing a place as there are limited opportunities to take the Course in Scotland.

Addressing the panel on the second consideration, Ms Doherty submitted that you have shown insight into the failings and have recognised the seriousness of these failings. She further submitted that your level of insight has continued to improve and drew the panel's attention to the previous panel's decisions and reasons, where this had been highlighted. On this basis, Ms Doherty submitted that a finding of impairment is not required on public interest grounds. She submitted that, through your various reflections and continued insight, you understand the importance of upholding proper standards and public confidence. She also reminded the panel that you have been *'completely candid'* about your previous failings.

Concerning the third consideration, Ms Doherty submitted that you have done everything in your power to keep up to date with current nursing knowledge and skills and have carried out a wide variety of training and education for your role as a support worker.

In regard to the fourth consideration, Ms Doherty submitted that you have continued to demonstrate safe and effective practice in your current role and told the panel that there have been no complaints, concerns or disciplinary action since resigning as a registered nurse in 2013.

Addressing the panel on the final consideration, Ms Doherty submitted that whilst it is accepted that you have not been able to secure a role in the NHS or a place on the Course, you have done everything you are able to in order to safely practice and engage with the conditions. She told the panel that this has been challenging for you as, when applying for the Course, you were *'up against candidates who are not subject to conditions'* which you believe impacts your ability to secure a place.

Turning the panel's attention to sanction, Ms Doherty submitted that a further extension of the order for a period of 18 months will allow you more time to continue searching for a role within the NHS and hopefully securing a place on the Course, should it become available in the near future.

When asked by the panel about whether the conditions of practice order was the reason your place was withdrawn, Ms Doherty told the panel that no specific reason was given about why this had happened; however, it is your belief that the place was withdrawn following a decision by the manager at the hospital where you were to do the Course. You also told the panel that you are not able to say if you were the only person who was withdrawn.

When asked by the panel to clarify the timescale of applications since the last review, you told the panel that you applied in 2019 and to the University of Aberdeen but were not successful and were asked to apply again in 2020. You did apply again but were told that the Course was no longer available; you made further enquiries in 2021 to two other universities but were then informed that the Course was no longer taking place. You further told the panel that you have not applied elsewhere.

When asked by the panel about how your current role as a support worker addresses the original concerns for which the conditions of practice order was implemented, Ms Doherty told the panel that there had been concerns regarding communication and record keeping of medication. She told the panel that, as evidenced by your manager's testimonial, you have built your skills in these areas.

When asked by the panel if the COVID-19 pandemic had an impact on your progress, Ms Doherty told the panel that it had been difficult for you to apply to new roles and to the Course; however, this is a general observation and not definitive.

When asked by the panel if the training you have undertaken to date was voluntary or mandatory, you told the panel that all training has been mandatory to your role.

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 at the substantive hearing of this case, you made admissions at the outset of the hearing. It further noted that you have remained engaged with the NMC and these proceedings and have provided a reflective statement which has demonstrated full insight and remorse regarding your lack of competence. Further, the panel was encouraged by the fact that you remain employed within the same role, by the same employer within a challenging caring environment and took into account the reflective testimonial provided by your manager which has supported this. It has further noted that you have undertaken various mandatory training and have, as far as practicable, complied with the conditions of practice order.

The panel further noted that since the last review of this order, you have been unable to secure a role in the NHS or a place on the Course. It noted that you have not worked in a

nursing capacity for a prolonged period of time, and that the Course is required to be undertaken so that you can make a safe return back to practice and keep your nursing knowledge and skills up to date. In fairness to you, the panel took account of the place you had secured which was later withdrawn, that you had unsuccessfully applied for further placements and have more recently been informed that the Course is no longer being offered in Scotland. However, the panel could not be satisfied that there would not be a repetition of the failings found proved at the substantive hearing as no remediation had taken place. The panel also had regard to your acceptance of impairment at the outset of this hearing through Ms Doherty. The panel therefore determined that a finding of current 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 current impairment on public interest grounds not required. It was of the view that a reasonable and well-informed member of the public, who was aware of the facts, would no longer be shocked if a finding of impairment were not found, given your subsequent insight and remorse.

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 considered this would be inappropriate. Taking no further action would not restrict your practice and would therefore not protect the public from the risk of harm identified.

It then considered the imposition of a caution order but again determined that this would be inappropriate for the same reasons. The panel was also of the view that the risks identified are not at the lower end of the spectrum of impaired fitness to practise.

The panel next considered whether imposing a further 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 relevant, 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, which are yet to be remedied. The panel accepted that you have experienced difficulties in securing a role in the NHS and a place on the Course. However, the panel took into consideration your continued engagement with the NMC and your expressed willingness to comply with the conditions imposed. It was further of the view that the conditions of practice order is sufficient to protect patients.

The panel was of the view that to impose a suspension order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case as there has been no increase to the risks identified in this case since the date of your last review.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to continue the current conditions of practice order for a period of 18 months, which will come into effect on the expiry of the current order, namely at the end of 29 December 2022. The panel was of the view that a further 18 months will allow you a further opportunity to successfully secure a place on the Course, commence employment in a NHS role and begin evidencing compliance with the conditions. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

1. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a

registered nurse who is physically present in or on the same ward, unit, floor, or home that you are working in or on.

2. You must not carry out medication administration unless directly supervised by another registered nurse until such time as you have been signed off as competent by your line manager who must also be a registered nurse. Any competency assessment must include the administration of medication and record keeping.
3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) every week to review the adequacy of your clinical record keeping generally until such time as you are signed off as being competent.
4. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practise
 1. Medication administration
 2. Record Keeping
 3. Communication skills
 4. Knowledge of clinical skills and procedures relevant to your role.
5. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.
6. You must keep a personal log (at least weekly) about the development of your practice. This log is to be provided to the NMC before any NMC review hearing or meeting.
7. You must send a report from your line manager mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC before any NMC review hearing or meeting.

8. You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.
9. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.
10. a) You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.

b) You must within 7 days of entering into any arrangements required by these conditions of practise provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.
11. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (10) above, to them
 1. Any organisation or person employing, contracting with or using you to undertake nursing or midwifery work
 2. Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing or midwifery services
 3. Any prospective employer (at the time of application) where you are applying for any nursing or midwifery appointment
 4. Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).'

The period of this order is for 18 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement and attendance at a future review hearing;
- Evidence of attempts made to gain experience in the NHS;
- Evidence of attempts made to gain admission to the Course;
- Updated reflective statement on your current skills and knowledge;
- Any relevant updated testimonials and references from individuals or colleagues you are currently working with or on the Course; and
- Documentary evidence of mandatory and any other training undertaken by you to keep your clinical knowledge up to date.

This will be confirmed to you in writing.

That concludes this determination.