

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

**Substantive Order Review Hearing
Thursday 27 July 2023**

Virtual Hearing

Name of registrant: Gareth Llewellyn

NMC PIN: 00I0249W

Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing (26 November 2003)
Supplementary Nurse Prescriber (3 May 2011)

Relevant Location: Cleveland

Type of case: Misconduct

Panel members: Deborah Hall (Chair, Registrant member)
Susan Anne Jones (Registrant member)
Robert Fish (Lay member)

Legal Assessor: Ben Stephenson

Hearings Coordinator: Rene Aktar

Nursing and Midwifery Council: Represented by Leesha Whawell, Case
Presenter

Mr Llewellyn: Not present and unrepresented at the hearing

Order being reviewed: Conditions of practice order (18 months)

Fitness to practise: Impaired

Outcome: **Suspension order (12 months) to come into
effect at the end of 2 August 2023 in
accordance with Article 30 (1)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Llewellyn was not in attendance and that the Notice of Hearing had been sent to Mr Llewellyn's registered email address on 28 June 2023.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, dates and that it shall take place online via Microsoft Teams and, amongst other things, information about Mr Llewellyn's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Whawell, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Llewellyn has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mr Llewellyn

The panel next considered whether it should proceed in the absence of Mr Llewellyn. The panel had regard to Rule 21 and heard the submissions of Ms Whawell who invited the panel to continue in the absence of Mr Llewellyn. She submitted that Mr Llewellyn had voluntarily absented himself.

Ms Whawell referred the panel to the documentation from Mr Llewellyn which included an email dated 24 July 2023 stating:

"I will not be attending the hearing on the 27th July."

The panel has decided to proceed in the absence of Mr Llewellyn. In reaching this decision, the panel has considered the submissions of Ms Whawell, the written submissions from Mr Llewellyn, and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Llewellyn;
- Mr Llewellyn has informed the NMC that he has received the Notice of Hearing and confirmed he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- This is a mandatory review, and;
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Llewellyn.

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 at the end of 2 August 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the seventh review of a conditions of practice order, originally imposed by a panel of the Conduct and Competence Committee, on 28 April 2016 for a period of 12 months. On 30 May 2017 the conditions of practice order was varied and extended for 12 months. On 30 April 2018 a panel of the Fitness to Practise Committee extended the order for a further 12 months, as did the reviewing panel on 10 May 2019. At the fourth review a varied conditions of practice order was imposed for eight months. At the fifth review on 22 January 2021, a conditions of practice order was imposed for a further 12 months. The conditions of practice order was extended for 18 months on 23 December 2021.

The current order is due to expire at the end of 2 August 2023.

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 whilst employed by the Mid Yorkshire NHS Trust as a Virtual Ward Community Matron:

1. In relation to an unknown patient:

1.1. On or around 4 October 2012 asked Community Matron (Mr 2) to prescribe Victoza when it was not clinically indicated.

1.2. Between 17 October 2012 and 15 December 2012 inappropriately increased their afternoon insulin dose instead of the morning insulin dose.

2. In relation to Patient A:

2.1. ...

2.2. In November 2012 inappropriately increased Patient A's afternoon and/or evening insulin dose instead of the morning insulin dose.

3. In or around November 2012, failed to escalate Patient B's altered bowel habits and/or low haemoglobin levels and/or irregular pulse to a GP.

4. In November 2012, prescribed erythromycin for Patient C's chest infection when clarithromycin was clinically indicated.

5. In or around December 2012 prescribed Mirtazapine to Person A inappropriately in that:

5.1. Person A was not on your caseload

5.2. Person A should have been referred to a GP and/or alcohol team

5.3. A prescription for Mirtazapine was not clinically indicated

5.4. You were not competent to prescribe for mental health conditions.'

The sixth reviewing panel determined the following with regard to 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. It has taken account of the submissions made by Mr Kewley on behalf of the NMC.

Mr Kewley submitted that there is no question that you are a competent nurse, however he submitted that there is a concern regarding the lack of progress in remediating the prescribing aspect of your practice. He submitted that it is up to you to update the panel on your progress and noted that there is no dispute that you are capable of remediation. Mr Kewley submitted that, until such time as you have been able to address the concerns in your practice, your practice remains impaired.

Mr Kewley submitted that the NMC's position is neutral regarding which sanction to impose and that it is entirely a matter for the panel to decide. He noted that the previous reviewing panel stated in their determination that a future panel may want to make a more draconian sanction, however he submitted that that is not the NMC's position.

The panel also had regard to your oral submissions. You took the panel through the background in your employment over the past years, and that you are currently contracted to work as a Band 5 agency nurse in the care home service Nottingham City Care Partnership. You have been working for this organisation for four years and for two years in the care home service.

You told the panel that there are limited opportunities for community nursing in the Northeast. You did travel to an interview for a Band 7 Nurse Practitioner post in the Urgent Care Centre at County Durham and Darlington Trust. However, in this instance, you stated that the Trust was not able to provide the support required to support your prescribing practice if they were to employ you. You also told the panel that you attempted to secure a Band 6 District Nursing position, however you told the panel that you did not have the essential Community Nursing qualification for this role.

You told the panel you were looking to write to the Director of Nursing at Nottingham City Care Partnership to set out a proposal for the development of prescribing opportunities that will allow you to strengthen your practice. When the panel asked why you had not done this ahead of this hearing, you told it that you have been working full time and paying bills and therefore you have been unable to send a letter to them which may allow you to explore opportunities regarding prescribing practice. You told the panel that, should you be unsuccessful in receiving support from the Director of Nursing, you would relocate to Scotland where you said there are more opportunities for nursing roles requiring prescribing practice.

You told the panel that you had to weigh up the necessity to keep working and earning with what can be done within your job as an agency nurse to help remediate your practice. [PRIVATE].

You told the panel that you would be grateful if you could have more time to enable you to return to a future panel with more information regarding the progress made in remediating your prescribing practice. You told the panel that you are hoping to start prescribing again and prove your worth as a competent prescriber. You highlighted that you have had successes in the past as a prescriber and that in the last couple of years working, you have built your confidence as a nurse.

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 but insufficient insight. The panel noted that you have provided further reflections into your failings as a nurse prescriber although this did not provide detail of reflections on the individual cases. At this hearing you told the panel of your plans to find a position of employment that will allow you to address the shortcomings in your practice. You also reiterated that you want to start prescribing again in the future.

In its consideration of whether you have taken steps to strengthen your practice, the panel took into account your plans to write to Director of Nursing in order to receive support regarding prescription training, however it noted that there was no concrete evidence of attempts to strengthen your practice. It took into account explanations of what you intend to do, though hadn't yet undertaken and it noted you have not taken the required steps to demonstrate that you are no longer impaired.

The last reviewing panel determined that you were liable to repeat matters of the kind found proved and today's panel has heard no new information that would suggest otherwise. On the basis that you have not been in a position where you can engage with the current conditions of practice, 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. It also noted the NMC's responsibility as a regulator and that an informed member of the public would be concerned should the NMC allow you to practise without restriction. 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 sixth reviewing panel determined the following with regard to 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 prescribing 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. It noted that the events previously identified had significant potential to cause real harm if they were to be repeated. 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 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 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 you have been complying with current substantive conditions of practice.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was no evidence of general incompetence. In this case, there are conditions which could be formulated which 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 you have been practicing well as a competent Band 5 Nurse and have presented the panel with a good testimonial. The panel also noted that there is a great demand for nurses in the context of the current pandemic.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a 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 2 February 2022. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

The panel therefore determined to extend the current conditions of practice order, as follows:

- 1. You must not practise as an independent nurse prescriber, unless you are deemed competent to do so by your medical prescribing supervisor, utilising the standards set out in the “Competency Framework for all Prescribers (NICE 2016)”;*
- 2. You must work with your medical prescribing supervisor to create a personal development plan designed to address the concerns about the following areas of your practice:*

1. *Independent nurse prescribing;*
3. *You must meet with your medical prescribing supervisor 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 and the “Competency Framework for all Prescribers (NICE 2016)” ;*
4. *You must send a report from both your line manager and your medical prescribing supervisor, setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan, as well as your general performance and conduct, to the NMC before any NMC review hearing or meeting;*
5. *You must notify the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer;*
6. *You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*
7. *You must within 14 days of accepting any post or 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;*
8. *You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement;*

9. You must immediately inform 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 8 above, to them:
- a) Any organisation or person employing, contracting with, or using you to undertake nursing or midwifery work;
 - b) Any agency you are registered with or apply to be registered with (at the time of application);
 - c) Any prospective employer (at the time of application);
 - d) 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 such a course (at the time of application).

The period of this order is for 18 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 2 February 2022 in accordance with Article 30(1).

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:

- *A forward-looking written strategy for obtaining a position that will enable you to address deficiency in your practice, including key milestones of what you would like to achieve and by what date.*
- *Specific written evidence of progress you have made in relation to securing opportunities to develop your prescribing knowledge and skills, ideally copies of correspondence regarding work opportunities.*
- *Evidence of self-assessment against the prescribing competency framework to identify areas where you will need refreshing in your skill base.*

- *Testimonials from colleagues, specifically relating to your understanding of prescribing practice.*

This will be confirmed to you in writing.

That concludes this determination.'

Decision and reasons on current impairment

The panel has considered carefully whether Mr Llewellyn's 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 responses from Mr Llewellyn. It has taken account of the submissions made by Ms Whawell on behalf of the NMC.

Ms Whawell provided the panel with the background facts of the case and directed them to the relevant pages in the NMC bundle. She also directed the panel to the review decisions of previous panels. Ms Whawell submitted that Mr Llewellyn's fitness to practise remains impaired and that there is no evidence of remediation or insight.

Ms Whawell submitted that there has been no material change since the date of the previous hearing and that Mr Llewellyn has not undertaken remedial work in respect of the original failings as a prescriber. She submitted that there remains a real risk of repetition and therefore a finding of continued impairment remains necessary on the grounds of public protection and also in the public interest.

Ms Whawell submitted that there is no new information from Mr Llewellyn to undermine the previous findings that his fitness to practice is impaired. She submitted that previous

panels have found impairment on both grounds and that there was no new information before it.

Ms Whawell submitted that the sixth reviewing panel concluded that a more severe sanction would be disproportionate. She submitted that since then, Mr Llewellyn has expressed that he wishes to come off the register. Ms Whawell submitted that allowing the order to lapse cannot be an option that is available to the panel due to a further referral being received by the NMC and that the new investigation remains ongoing. Hence, Mr Llewellyn's registration is not being kept active only by the virtue of these proceedings. Ms Whawell submitted that all other sanctions are available to the panel 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 Mr Llewellyn's fitness to practise remains impaired.

The panel noted that it had no new information before it from Mr Llewellyn which mitigates the risk of repetition of the conducts that led to his failings. The panel noted that no steps have been taken by Mr Llewellyn to demonstrate any further remediation or insight since the date of the substantive hearing. The panel noted that there has been no compliance from Mr Llewellyn with the previous panel's suggestions. The panel further noted that Mr Llewellyn is no longer working as a nurse and has asked to be removed from the register. The panel therefore concluded that there continues to be a risk of harm to patients if Mr Llewellyn were to practise unrestricted and therefore finds impairment on the grounds of public protection.

In light of there being no new information before the panel, it was of the view that the ongoing risk to the public has not reduced since the last hearing. It concluded that Mr Llewellyn's fitness to practise remains impaired by reason of his failings and lack of insight. 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 protection grounds is required.

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 Mr Llewellyn's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Llewellyn'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 seriousness of the case, and the public protection issues identified, an order that does not restrict Mr Llewellyn's 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 Mr Llewellyn's 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 the continuation of the current conditions of practice order. The panel is mindful that any conditions imposed must be proportionate, measurable and

workable. The panel bore in mind that Mr Llewellyn is not currently working as a registered nurse and that he no longer wishes to be on the register. The panel noted that Mr Llewellyn has previously had a conditions of practice order imposed for over 7 years and that he has not shown evidence of strengthened practise.

On this basis, the panel concluded that a conditions of practice order is no longer practicable. The panel concluded that no workable conditions of practice could be formulated in this case.

The panel next considered the imposition of a suspension order. The panel considered that a suspension order was sufficient to protect the public and will satisfy the public interest in this case. Accordingly, the panel determined to impose a suspension order for the period of 12 months would provide registrant with an opportunity to re-engage with the NMC, to develop his insight, and to consider his future within the nursing profession. It considered this to be the most appropriate and proportionate sanction available.

The panel considered the imposition of a striking off order, yet in light of the narrow area of concern, the previous evidence of good nursing practice in other areas, there being no evidence of conduct which is fundamentally incompatible with remaining on the register and the absence of any attitudinal problems, the panel considered this remains disproportionate at this time.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 2 August 2023 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:

- A written piece clearly setting out Mr Llewellyn's intentions regarding his work in the nursing profession in the future, and, where appropriate, a clear plan for his future away from nursing, should that continue to be his intention.

- Should Mr Llewellyn have decided to remain in the nursing profession, specific written evidence of progress he has made in relation to securing opportunities to develop his prescribing knowledge and skills, ideally copies of correspondence regarding work opportunities.
- Certificates or training relating to his understanding of prescribing practice.
- Testimonials from colleagues in employment outside of the nursing profession.

This will be confirmed to Mr Llewellyn in writing.

That concludes this determination.