

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

**Substantive Order Review Meeting
Wednesday, 15 November 2023**

Virtual Hearing

Name of Registrant: Natalie Jane Smith

NMC PIN 10G0695E

Part(s) of the register: Registered Nursing – Childrens Nurse (August 2010)

Relevant Location: Peterborough

Type of case: Lack of competence

Panel members: Shaun Donellan (Chair, lay member)
Manjit Darby (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Muminah Hussain

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (6 months)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Smith's registered email address by secure email on 5 October 2023.

Further, the panel noted that correspondence with Miss Smith's representative at the Royal College of Nursing (RCN) on 7 November 2023 in which they stated:

"I think it's best that this is heard as a meeting."

The panel took into account that the Notice of Meeting provided details of the review including the time, dates and the fact that this meeting was heard virtually.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Smith has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision and reasons on review of the current order

The panel decided to continue the conditions of practice order for 6 months. This order will come into effect at the end of 28 December 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 30 November 2022. This

The current order is due to expire at the end of 28 December 2023.

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:

- 1) *Whilst employed by North West Anglia NHS Foundation Trust between December 2018 and November 2019:*
 - a) *failed to demonstrate the standards of knowledge, skill and judgment in medication administration required to practise without supervision as a registered nurse, in that you:*
 - i. *on 20/21 December 2018, administered inhaler medication, namely Salbuamol, incorrectly in that you did not count at least 8 seconds per puff.*
 - ii. *on 08 February 2019, did not administer medication, namely co-amoxiclav, as prescribed to Patient F.*
 - b) *failed to demonstrate the standards of knowledge, skill and judgment in patient care required to practise without supervision as a registered nurse, in that you:*
 - i. *on 30 December 2018, did not replenish two tracheostomy boxes after use.*
 - ii. *on 04 January 2019, did not complete vital signs for Patient C when it would have been clinically appropriate to do so.*
 - c) *failed to demonstrate the standards of knowledge, skill and judgment in practising within your scope of practice required to practise without supervision as a registered nurse, in that you:*
 - i. *on 25 December 2018, inserted a nasal bridle when you did not have the training required to do so safely.*
 - ii. *on 30 July 2019, cannulated a patient when did not have the training required to do so safely.*
 - d) *failed to demonstrate the standards of knowledge, skill and judgment in record keeping required to practise without supervision as a registered nurse, in that you:*

- i. on 20/21 December 2018, did not record in Patient A's notes that you had administered inhaler medication.*
- ii. on 04 January 2019, did not complete any records for Patient C between 14.19 and 18.50 when it would have been clinically appropriate to do so.*
- iii. on 05 January 2019, did not complete a cannula care bundle for Patient D.*
- iv. on 09 January 2019:*
 - 1. between c. 20.00 and 06.30 did not complete admission, plan of care and care delivered documentation in respect of an unknown patient.*
 - 2. did not sign the drug chart for a patient in Bed 29 or record the time at which you had administered this patient's medication.*
 - 3. did not record feeds given to a patient in Bed 30 in the patient's notes*
 - 4. did not undertake or record CSM observations for the patient in Bed 30 when it would have been clinically appropriate to do so.*
- v. on 24 January 2019, did not sign Patient E's prescription chart to confirm IV medication had been administered.*
- vi. on 21 October 2019:*
 - 1. signed to indicate you had administered medication, namely ibuprofen, to Patient G when you had not done so.*
 - 2. re-signed Patient G's prescription chart when you administered the medication referred to above without correcting/deleting the earlier erroneous entry.*
- e) failed to demonstrate the standards of knowledge, skill and judgment in escalation of care to practise without supervision as a registered nurse, in that you:*
 - i. on 09 April 2019, inappropriately escalated a query about your scope of practice to a staff member who was not on site.*

- 2) *have, or have had in the past, the health condition set out in Schedule 1.*

AND in light of the above, your fitness to practise is impaired by reason of your lack of competence and/or health.

Schedule 1

- 1) *Recurrent Depressive Disorder ICD 10 F33.1*

The original panel determined the following with regard to impairment:

'The panel then went on to consider whether Miss Smith's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Smith, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of lack of competence, the panel determined that the facts set out within the CPD amounted to a fair sample of Miss Smith's practice over a reasonable period of time and demonstrated a standard of professional performance that was unacceptably low.

The panel further determined that Miss Smith's lack of competence breached the following elements of the NMC code, specifically:

1 Treat people as individuals and uphold their dignity

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

8 Work co-operatively

8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate

10 Keep clear and accurate records relevant to your practice

10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 complete records accurately ...

13 Recognise and work within the limits of your competence

13.3 ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

The panel endorsed paragraphs 28 to 29 of the provisional CPD agreement in respect of lack of competence.

The panel then considered whether Miss Smith's fitness to practise is currently impaired by reason of her lack of competence.

The panel referred to the questions formulated by Dame Janet Smith in her Fifth Report from Shipman as approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J. It determined that Miss Smith's failure to meet the requisite standard of a registered nurse, had in the past, breached a fundamental tenet of the nursing profession and subsequently brought the nursing profession into disrepute.

The panel also referred to the case of Cohen v General Medical Council [2008] EWHC 581 (Admin). It determined that whilst the facts found proved are capable of remediation, at this time Miss Smith has not had the opportunity to demonstrate any remediation and therefore there remains a risk of repetition. Further, the panel noted that Miss Smith has not worked as a registered nurse since 2019. In light of this the panel determined that

Miss Smith's fitness to practice is currently impaired on the ground of public protection.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Smith's fitness to practise impaired on the grounds of public interest.

In this respect the panel endorsed paragraphs 31 to 34 of the provisional CPD agreement.

The panel noted within paragraphs 37 and 38 of the agreement, it is stated that Miss Smith attended an appointment with Dr Junaid, who concluded there were no 'clinical reasons why Miss Smith is unfit to practise as a nurse' and that '[w]hilst there is a risk of future episodes of depression and anxiety, the risk at present is very low'. In light of this, the panel agreed with the CPD that Miss Smith's fitness to practice is not impaired in relation to her health.'

The original panel determined the following with regard to sanction:

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

The panel 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 Miss Smith'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 Miss Smith's lack of competency is wide ranging, relating to basic nursing skills and therefore determined that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Smith's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- No evidence of harmful deep-seated personality or attitudinal problems;*
- Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- ...*
- Potential and willingness to respond positively to retraining;*
- ...*
- Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- The conditions will protect patients during the period they are in force; and*
- Conditions can be created that can be monitored and assessed.*

The panel 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 Miss Smith would be willing to comply with

conditions of practice. The failings identified in this case are clinical and remediable. The panel had regard to the fact that these incidents happened a long time ago and that it was in the public interest that, with appropriate safeguards, Miss Smith should be able to return to practise as a nurse.

Balancing all of these factors, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a conditions of practice order.

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 Miss Smith's case because a lesser sanction can address the public protection and public interest concerns identified. Further a suspension order would not provide Miss Smith with an opportunity to strengthen her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public and mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.'

Decision and reasons on current impairment

The panel has considered carefully whether Miss Smith'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 the completed personal contact and employment details form from Miss Smith dated 13 January 2023, in which she stated she had not been employed since December 2019.

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 Miss Smith's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Smith had insufficient insight. At this meeting, the panel had no further information before it regarding insight.

In its consideration of whether Miss Smith has taken steps to strengthen her practice, the panel took into account the correspondence from Miss Smith dated 13 January 2023 in which she had said she was not working at that time.

The original panel determined that Miss Smith was liable to repeat matters of the kind found proved. Today's panel has received no new information regarding repetition. 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 Miss Smith's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Smith 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 Miss Smith'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 Miss Smith'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 whether imposing a further conditions of practice order on Miss Smith'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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest. In this case, there are conditions 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 would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Smith's case.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 6 months, which will come into effect on the expiry of the

current order, namely at the end of 28 December 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 ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse of band 6 or above.
2. You must work with your line manager, supervisor or mentor to create a personal development plan (PDP). Your PDP must address the alleged regulatory concerns about medication administration, patient care, scope of practice, record keeping and escalation of care.
3. You must:
 - a) Send your case officer a copy of your PDP within four weeks of commencing any work.
 - b) Meet with your line manager, supervisor, or mentor at least every two weeks to discuss your progress towards achieving the aims set out in your PDP.
 - c) Send your case officer a report from your line manager, supervisor, or mentor before the next review. This report must show your progress towards achieving the aims set out in your PDP.
4. You must keep us 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 us 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 6 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 28 December 2023 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 Miss Smith has 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:

- Miss Smith's attendance at the hearing;
- Miss Smith's continued engagement with the NMC;
- A character testimonial from any paid or voluntary employer;
- A reflective piece demonstrating insight into her failings and identifying any steps Miss Smith has taken to strengthen her practice
- An update on future intentions with regard to remaining on the register.

This will be confirmed to Miss Smith in writing.

That concludes this determination.