

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

**Substantive Order Review Hearing
Monday, 20 November 2023**

Virtual Hearing

Name of Registrant: Anne Marie Stocks

NMC PIN 09I0614S

Part(s) of the register: RNMH (2014)

Relevant Location: Dumfries and Galloway

Type of case: Misconduct

Panel members: Clara Cheetham (Chair, Lay member)
Jim Blair (Registrant member)
Brian Stevenson (Lay member)

Legal Assessor: Mark Sullivan

Hearings Coordinator: Catherine Blake

Nursing and Midwifery Council: Represented by Piers Walter, Case Presenter

Mrs Stocks: Not present and not represented at the hearing.

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

Fitness to practise: Impaired

Outcome: **Suspension order (9 months) to come into effect on 27 December 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 Mrs Stocks was not in attendance and that the Notice of Hearing had been sent to Mrs Stocks' registered email address by secure email on 11 October 2023.

Mr Walter, 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.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Stocks' right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Stocks 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 Mrs Stocks

The panel next considered whether it should proceed in the absence of Mrs Stocks. The panel had regard to Rule 21 and heard the submissions of Mr Walter who invited the panel to continue in the absence of Mrs Stocks.

Mr Walter referred the panel to the email received from Mrs Stocks on 15 November 2023 which states:

'I will not be attending my hearing nor will my representative.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Stocks. In reaching this decision, the panel has considered the submissions of Mr Walter, the correspondence from Mrs Stocks, 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 Mrs Stocks;
- Mrs Stocks has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; 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 to proceed in the absence of Mrs Stocks.

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 27 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (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 29 November 2022.

The current order is due to expire at the end of 27 December 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, a Registered Nurse:

1. *On 31 January 2020 from around 22:00 into 1 February 2020:*
 - a. *Used your body to block resident A's movement. [PROVED]*
 - b. *Took resident A by the shoulders and pushed her against a door. [NOT PROVED]*
 - c. *Shouted or said to resident A the words, or words to the effect of that set out in Schedule 1. [PROVED]*
 - d. *Swore at resident A using the words, or words to the effect of that set out in Schedule 2. [NOT PROVED]*
 - e. *Pinned resident A against the floor by her shoulders. [NOT PROVED]*
 - f. *Held resident A down as described in Charge 'e.' for around 5 minutes. [NOT PROVED]*
 - g. *Held resident A down against the floor using her shoulder and her wrist. [PROVED]*

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

'The panel finds that Resident A was put at risk of harm as a result of your misconduct by further escalating an already volatile situation with the words that you used. Your misconduct breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice.

The panel had regard to the reflective statement that you provided for the panel to consider in respect of misconduct and impairment. It took account of the large number of training certificates that you provided. The panel noted that many of the training certificates that you provided were from mandatory courses and did not specifically relate to the failing found proved. The panel took account of training

courses which included areas such as: challenging behaviour, safeguarding and protection of adults, communication, and dementia care.

The panel noted that you have reviewed the National Institute for Health and Care Excellence (NICE) guidelines on challenging behaviour and learning disabilities, and have considered how you would incorporate this into your practice within your reflection:

“I have fully reviewed the NICE guidelines in regards to Challenging behaviour and learning disabilities: prevention and interventions for people with learning disabilities whose behaviour challenges and I understand the importance of the assessment process, the importance that personal and environmental factors have in playing a part in the escalation and de-escalation of physical and emotional distress...”

The panel also noted that in your conclusion, there was further evidence where you considered how to incorporate new learning into your practice:

“After reflecting on the incident and the referral made against me I can now clearly understand how my clinical judgements particularly around environment, tone of voice, staffing levels during manual restraint, could have impacted on the physical and emotional distress of the service user...”

The panel reached the view that you have demonstrated developing insight into your past misconduct. The panel determined that your reflective statement failed to properly illustrate how exactly your actions impacted on Resident A, your colleagues and the wider nursing profession. Your reflective statement also failed to fully address the impact of your misconduct on the reputation of the nursing profession.

The panel acknowledged that you have expressed regret and remorse for your misconduct and demonstrated some insight and remediation, it considered that this needs further development in order to be satisfied that your misconduct would not be repeated in the future.

The panel also took into account that you have been working for the past 18 months without issue or concern. However, in the absence of full insight and remediation, the panel determined that there remains a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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 your fitness to practise is also impaired on the grounds of public interest.'

The original 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 public protection concerns identified. The panel decided that it would be neither appropriate 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 public protection concerns identified, an order that does not restrict your practice would not be appropriate in the circumstances. The panel determined that a caution order would not protect the public and was therefore inappropriate. Further a caution order would not satisfy the public interest in your case.

The panel next considered whether placing conditions of practice on your 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;*
- *No evidence of general incompetence;*
- *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 accepted that you would be willing and able to comply with any conditions imposed and determined that it would be possible to formulate appropriate and practical conditions which would address the concerns it identified.

The panel had regard to the fact that these incidents happened a long time ago and there have been no other NMC referrals made against you. The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

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 a clear message about the standards of practice required. Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order for a period of 12 months. The panel decided that 12 months would allow you sufficient time to undertake the necessary training, develop your insight, and provide the NMC with evidence of your strengthened nursing practice. However, you may request an early review of this Order at any time.

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 as neither a suspension or a strike-off would support your return to safe and effective, unrestricted nursing practice.

The panel determined that the following conditions 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 undertake assessed courses in the following areas:
 - a) de-escalation of violence and aggression*
 - b) leadership skills, which is to include effective communication with staff*and you must send your NMC case officer evidence of successful completion and indicative content of the courses within six months of this decision.*

- 2. You must work with your manager, mentor or supervisor to create a PDP in respect of developing your de-escalation, communication and leadership skills. The PDP must also include:
 - a) an evaluation of how you have used your knowledge, skills and training to de-escalate situations at work;*
 - b) an evaluation of your development in respect of leading and communicating with staff whilst managing challenging behaviours.**

- 3. You must:
 - a) send your case officer a copy of your PDP within 28 days of this decision.**

- b) meet once a month with your manager, mentor or supervisor at to discuss your progress towards achieving the aims set out in your PDP.*
 - c) send your case officer a report from your manager, mentor or supervisor seven days prior to any review of this order. 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*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Stocks' 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 correspondence from Mrs Stocks. It has taken account of the submissions made by Mr Walter behalf of the NMC.

Mr Walter informed the panel that no evidence of Mrs Stocks completing additional courses have been provided to the NMC, as required by condition 1, nor had she sent in a Professional Development Plan (PDP) as required by condition 2.

Mr Walter, by way of update, directed the panel to the supervision/support records in the main hearing bundle. He noted that one support meeting on 2 March 2023 raised concerns

about Mrs Stocks having a disagreement with colleagues on night shifts. The report highlighted her engagement with supervision and a willingness to make changes. Mr Walter then noted that on 7 March 2023, the home manager phoned the NMC to inform it of an incident relating to a safeguarding issue where it is alleged that the registrant saw an agency care worker raise a hand to the one of the residents in the care home but did not report it to the safeguarding team for two days. The home manager also raised some concerns about the registrant's relationships with colleagues, having mentioned during a supervision meeting that she felt she was *'almost coming to blows'* with them.

Mr Walter noted that by 17 March 2023, Mrs Stocks was signed off sick for three months. He informed the panel that during a phone call to the NMC on 28 April 2023, Mrs Stocks indicated that she had resigned from the position at the home and was looking for other work outside the health sector. In another phone call on 26 June 2023, Mrs Stocks informed NMC by phone that she was now working as a lorry driver.

Mr Walter directed the panel's attention to Mrs Stocks' email to the NMC, received 15 November 2023 in which she stated:

'...I no longer work as a nurse and having been trying for months to remove myself from the register to no avail. I would be very appreciative if you could advise me how to remove myself from the register as I do not want or wish to be a nurse any longer.'

Mr Walter noted that Mrs Stocks' registration is due to expire at the end of 29 February 2024.

Mr Walter noted that, at review, the registrant bears the persuasive burden to demonstrate for the panel that they have acknowledged why their past professional performance is deficient and that they have addressed those impairments through insight. He reiterated that there have been further complaints made against Mrs Stocks' practice since the current conditions of practice order was imposed. Mr Walter submitted that Mrs Stocks has not provided the panel with persuasive information that her past misconduct has been remedied. He submitted that, in the absence of such information, the NMC's presumption is that Mrs Stocks' fitness to practice remains impaired.

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 Mrs Stocks' fitness to practise remains impaired.

The original panel determined that Mrs Stocks was liable to repeat matters of the kind found proved. Today's panel has received no information to suggest that the risk has decreased. Noting that the persuasive burden is on the registrant, the panel saw no information that Mrs Stocks has developed her insight or taken steps to strengthen her practice. In its consideration of whether Mrs Stocks has taken steps to strengthen her practice, the panel took into account that condition 1 has not been complied with as Mrs Stocks has not submitted any evidence of having completed assessed courses of the areas stipulated therein. The panel also noted that no PDP has been submitted as per condition 2. The panel also noted that the previous panel's suggestions about what would be helpful have also not been provided.

The panel also noted that the current conditions of practice have not been fully complied with, and that Mrs Stocks' former manager had raised further concerns during the current conditions of practice period with regard to the safeguarding of a patient, as well as her professional relationships with colleagues when Mrs Stocks was working as a nurse.

In light of this, this panel determined that Mrs Stocks is 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 Mrs Stocks' fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Stocks' 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 acknowledged that the current conditions of practice order will expire in late December, which would mean Mrs Stocks could practise unrestricted for over two months until her registration expired. The panel noted that, while Mrs Stocks has indicated an intention to be removed from the register, her registration fees have been paid until 29 February 2024, no application for Agreed Removal has been received by the NMC, and she may change her mind about returning to practice.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case, noting that it has been provided with information indicating that there may have been further misconduct of a similar nature since the substantive hearing. Taking into account all of the information to it, the panel decided that it would neither safeguard public protection adequately, nor be proportionate or 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 Mrs Stocks' 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 Mrs Stocks' 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 continuing a conditions of practice order on Mrs Stocks' registration would be a sufficient and appropriate response. The panel bore in mind that Mrs Stocks has made little effort to comply with the current conditions and it is of the opinion that Mrs Stocks is unlikely to be willing to comply with any conditions imposed upon her practice given that she is no longer working as a nurse and has indicated an intention to leave the register. Furthermore, the panel noted that there is an indication that the level of risk identified at the substantive hearing might have increased given information regarding a possible repetition of similar behaviour.

In these circumstances, the panel concluded that a conditions of practice order is no longer the appropriate order in this case. The panel was of the view that conditions of practice are not appropriate for a registrant who is not engaging with current conditions and not interested in returning to practice. The panel further decided 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 to allow Mrs Stocks adequate opportunity to take meaningful steps towards returning to practice, should she change her mind, or otherwise complete the process of Agreed Removal from the register. The panel considered that a striking off order would be disproportionate and unnecessarily punitive. It considered suspension to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely the end of 27 December 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.

This will be confirmed to Mrs Stocks in writing.

That concludes this determination.