

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

**Substantive Order Review Meeting
Monday, 18 March 2024**

Virtual Meeting

Name of Registrant: Ms June Lewis

NMC PIN 93I0053W

Part(s) of the register: RNA, Registered Nurse – Adult (15 September 1996)

Relevant Location: Aberdare

Type of case: Misconduct

Panel members: Shaun Donnellan (Chair, Lay member)
Linda Pascall (Registrant member)
Alex Forsyth (Lay member)

Legal Assessor: Robin Hay

Hearings Coordinator: Yewande Oluwalana

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

Fitness to practise: Impaired

Outcome: **Conditions of practice order (12 months) to come into effect on 2 May 2024 in accordance with Article 30 (1)**

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 Ms Lewis' registered email address by secure email on 15 February 2024.

The panel considered that the Notice of Meeting provided details of the review, that the review meeting would be held no sooner than 18 March 2024 and inviting Ms Lewis to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Ms Lewis 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 confirm the conditions of practice order for a further 12 months. This order will come into effect at the end of 2 May 2024 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 4 April 2023.

The current order is due to expire at the end of 2 May 2024.

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

The charge found proved which resulted in the imposition of the substantive order was as follows:

'That you, a registered nurse employed by Beeches Care Home:

1) ...

2) ...

3) ...

4) *Between 12 June 2020 and 22 June 2020 failed to amend Resident A's insulin dose on the MAR chart following a review by the GP and advanced nurse practitioner. [Charge found proved from 17 June to 22 June 2020]*

5) ...

6) ...

7) ...

8) ...

9) ...

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Ms Lewis' fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...'*

The panel determined that limbs a, b and c, of the Grant test are engaged.

The panel determined that Ms Lewis' failures in respect of Resident A, a vulnerable resident, potentially placed that resident at an unwarranted risk of harm. The panel determined that Ms Lewis' misconduct had breached the fundamental tenets of the nursing profession and that her actions brought the reputation of the profession into disrepute. The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Ms Lewis' misconduct was remediable and whether it had been remediated.

The panel then considered the factors set out in the case of Cohen v GMC [2007] EWHC 581 (Admin). It determined that the misconduct in this case can be remediated.

The panel went on to consider whether Ms Lewis remained liable to act in a way that would put patients at risk of harm, would bring the profession into disrepute and breach the fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight and remediation.

Regarding insight, the panel carefully considered the documentation contained the bundles and found that there was nothing within the bundle that indicated any evidence of insight or remediation. The panel concluded that there was no evidence of any contextual, personal or working environment factors that may have adversely affected Ms Lewis' ability to practise safely and professionally. It considered that Ms Lewis has had limited engagement with these proceedings and not responded to the regulatory concerns. Therefore, the panel has not been able to ascertain her current level of insight. The panel was therefore unable with confidence to accept that Ms Lewis had demonstrated any insight into her misconduct or that she had considered the impact of her behaviour on patients, colleagues and the reputation on the profession.

The panel considered that Ms Lewis had not recognised her failings in respect of Resident A and continued to deflect blame. Furthermore, the panel noted that it had no evidence of reflection from Ms Lewis.

The panel next considered whether Ms Lewis has taken steps to strengthen her practice. It took into account Ms Lewis's positive reference dated 13 July 2020 with no further reported concerns and the fact that she did some training on medicine management and leadership, which the panel considered as partly working towards strengthening her practice. However, it did not have any recent references, testimonials or evidence of Continuing Professional Development (CPD). The panel noted that, although evidence of some training was provided, the most recent being May 2021, there was no evidence how this related to the regulatory concerns.

In the absence of any evidence of steps to strengthen her practice or provide evidence of remediation, the panel concluded that Ms Lewis had not remediated her actions.

In all the circumstances and notwithstanding that Ms Lewis has had a blemished free career until these events, the panel considered that there is a risk of repetition should Ms Lewis return to practice as she remained liable to act in a way which could place patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. The panel therefore determined 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

Having regard to Ms Lewis' actions in this case, the panel considered that members of the public and patients would expect a nurse to provide safe and effective care to patients by managing care and keeping up to date records of medication administration. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

Having regard to all of the above, the panel concluded that Ms Lewis' fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel next considered whether placing conditions of practice on Ms Lewis' 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 and considered the following factors were relevant in this case:

- 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;*
- 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 took account of the fact that the misconduct was over a period of five days with no adverse findings in relation to Ms Lewis' practice either before or since the incident. The panel had regard to the fact that these

incidents happened a long time ago and that, other than these incidents, Ms Lewis' has had a long and unblemished career as a nurse.

The panel was of the view that this order would allow for Ms Lewis to work on and evidence insight and the impact of her failings as identified in this case on patients and colleagues.

Balancing all of these factors, the panel determined that the appropriate and proportionate sanction is that of a conditions of practice order in order to adequately protect the public.

The panel was of the view that it was in the public interest that, with appropriate safeguards, Ms Lewis should be able to return to practise as a nurse, and an informed and reasonable member of the public would draw the same conclusion.

The panel was of the view that to impose a suspension order would be disproportionate at this time and would not be a reasonable response in the circumstances of Ms Lewis' case considering there are workable conditions to protect the public and to uphold the wider public interest.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will 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.

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 will send the NMC a report seven days in advance of the next NMC hearing or meeting from your line manager, mentor or supervisor.*
2. *You must ensure that you are supervised by manager, mentor or supervisor 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 the same grade or above.*
3. *You must work with a manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns highlighted in this case:*
 - *Failure to communicate information from one health care professional to another*
 - *Failure to document that information in patients/residents' health care records*
 - *The impact of failing to do so over a period of time*

You must:

- *Send your case officer a copy of your PDP within 3 months of these conditions coming into place.*
 - *Send your case officer a report from a manager, mentor or supervisor every 3 months. This report must show your progress towards achieving the aims set out in your PDP.*
4. *You must engage with your manager, mentor or supervisor on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:*
 - *Meeting with your manager, mentor or supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 5. *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.*

- 6. 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.*

- 7. 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*

- 8. 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.*

- 9. 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 up to 12 months.

Before the order expires, a panel will hold a review hearing to see how well Ms Lewis 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:

- *Ms Lewis' attendance at the review hearing;*
- *References from any work undertaken, whether paid or voluntary; and*
- *Any evidence of professional development and training.*
- *A reflective piece dealing with the matters found proved.'*

Decision and reasons on current impairment

The panel considered whether Ms Lewis' fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council (NMC) has defined fitness to practise as a registrant's suitability to remain on the register without restriction. The panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has considered 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, namely the NMC bundle.

The panel 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.

At this meeting, the panel found that there was no information before it, that demonstrated Ms Lewis had strengthened her practice. It found that Ms Lewis has not provided any information as to what training she has undertaken to address the concerns or provided

any testimonials. The panel was not satisfied that the misconduct found proved had been remedied.

The panel has received no new information that would go against that finding. The panel found that the circumstances remained the same as the substantive hearing and Ms Lewis is now still liable to repeat the misconduct found proved and patients remain at risk of harm if a finding of impairment is not made.

The panel therefore determined 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 considered that a well-informed member of the public would be concerned that a registered nurse is not providing safe and effective care to patients by managing care and keeping up to date records of medication administration. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Ms Lewis' fitness to practise remains impaired on both public protection and the wider public interest grounds.

Decision and reasons on sanction

Although Ms Lewis has not complied with the current conditions, in the light of what she has said about having retired from all work because of her [PRIVATE] this failure may well not have been deliberate. In her email correspondence on 28 April 2023 to the NMC she stated,

'I have already informed the NMC that I have retired, not just from nursing but from all forms of employment. This is due to [PRIVATE]'

Having found Ms Lewis' 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 misconduct by Ms Lewis, and the public protection issues identified, an order that does not restrict her 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 Ms Lewis' 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 Ms Lewis' 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 the absence of any further information as requested by the NMC, the panel found that her actions could be remedied and are not incompatible with her remaining on the NMC register.

The panel determined 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, no deep seated attitudinal problems, and that conditions could be created that can be monitored and assessed. The panel found that the

current conditions of practice order is appropriate and proportionate. It would protect patients during the period they are in force and address the public interest concerns.

The panel considered that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Ms Lewis as the misconduct was not fundamentally incompatible with her remaining on the register. Ms Lewis' conduct could be addressed with retraining.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 2 May 2024. It decided to confirm 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 will send the NMC a report seven days in advance of the next NMC hearing or meeting from your line manager, mentor or supervisor.*
2. *You must ensure that you are supervised by manager, mentor or supervisor 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 the same grade or above.*
3. *You must work with a manager, mentor or supervisor to create a Personal Development Plan (PDP). Your PDP must address the concerns highlighted in this case:*
 - *Failure to communicate information from one health care professional to another*
 - *Failure to document that information in patients/residents' health care records*

- *The impact of failing to do so over a period of time*

You must:

- *Send your case officer a copy of your PDP within 3 months of these conditions coming into place.*
 - *Send your case officer a report from a manager, mentor or supervisor every 3 months. This report must show your progress towards achieving the aims set out in your PDP.*
4. *You must engage with your manager, mentor or supervisor on a frequent basis to ensure that you are making progress towards aims set in your personal development plan (PDP), which include:*
 - *Meeting with your manager, mentor or supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
 5. *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.*
 6. *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.*
 7. *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*
8. *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.*
9. *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 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely on 2 May 2024 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 Ms Lewis 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:

- A confirmation of Ms Lewis' future intentions i.e. written response to the NMC email sent on 2 May 2023.

This will be confirmed to Ms Lewis in writing.

That concludes this determination.