

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

**Substantive Order Review Hearing
Thursday, 23 March 2023**

Virtual Hearing

Name of registrant:	Kim Louise Ramsay
NMC PIN:	15I1079S
Part(s) of the register:	Registered Nurse – Sub Part 1
Area of registered address:	Ayrshire
Type of case:	Misconduct
Panel members:	Judith Webb (Chair, Lay member) Jodie Jones (Registrant member) Richard Bayly (Lay member)
Legal Assessor:	Gareth Jones
Hearings Coordinator:	Samiz Mustak
Nursing and Midwifery Council:	Represented by Simon Gruchy, Case Presenter
Ms Ramsay:	Present and represented by Laura Bowen of Anderson Strathern, instructed by the Royal College of Nursing (“RCN”)
Order being reviewed:	Conditions of practice order (12 months)
Fitness to practise:	Impaired
Outcome:	Conditions of practice order (3 years to come into effect at the end of 2 May 2023 in accordance with Article 30(1) of the ‘Nursing and Midwifery Order 2001’ (the Order).

Decision and reasons on review of the substantive order

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

This order will come into effect at the end of 2 May 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 1 April 2022.

The current order is due to expire at the end of 2 May 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, whilst employed at Crossgate Care Home ("the Home") on or around 26/27 July 2019, following Resident A's fall:

1) ...

2) Did not undertake/record neurological observations, including;

a) ...

b) ...

c) Touch response check

d) Pain response check

3) Did not complete a Falls Risk Record

4) Did not complete a Risk Assessment

5) Did not fully/adequately complete an accident/incident form in that you;

- a) *Did not fully complete Section 1 of the form.*
 - b) *Did not fully complete Section 2 of the form*
 - c) *Did not fully complete Section 5 of the form.*
 - d) *Did not fully complete Section 6 of the form*
- 6) *Did not complete a daily record of care*
- 7) *Did not complete a separate Body Map/Evaluation of Injury form*
- 8) *Did not complete/record a handover sheet*
- 9) *Did not notify Resident A's family/next of kin*
- 10) *On 5 January 2019 when admitting Resident B to the Home;*
- a) *Did not complete Resident B's admissions records.*
 - b) *Did not undertake adequate observations.*
 - c) *Did not notify Resident B's family/next of kin.*

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, your 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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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 finds that Resident A and Resident B were put at risk of serious harm as a result of your misconduct. The panel did not find that your conduct

brought the nursing profession into disrepute nor breached any fundamental tenets of the profession.

Regarding insight, the panel considered that within your reflective piece and oral evidence you made admissions to making errors and you have taken some steps to strengthen your practice by carrying out record keeping training. The panel acknowledge that you recognised that you needed further support and you are willing to go back to university or complete further training. It did acknowledged that you have demonstrated some understanding of how your actions put residents at risk of harm. However, the panel determined you have not demonstrated an understanding of how your actions could have impacted the residents' families, your colleagues and the profession.

The panel noted that you admitted that your fitness to practise is currently impaired.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account the training certificates provided, and your reflective account, and acknowledged that the training certificates are relevant to record keeping.

The panel is of the view that there remains a risk of repetition should you be in a similar situation again. The panel noted that you resigned from your most recent post, due to the demands of the role. While this reflects well on your level of insight, it also serves to confirm that you do not yet believe you have fully strengthened your practice. The panel therefore determined you have demonstrated developing, but insufficient, insight. 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; 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 impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'Having found your 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 took into account the following aggravating features:

- *Your failure to keep accurate records put residents at risk of serious harm.*

The panel also took into account the following mitigating features:

- *You have demonstrated a good level of insight into your failings and understanding of the problem.*

- *In relation to Resident A, your personal circumstances at the time may have affected your decision making.*
- *You had to resolve an issue as to the accuracy of the accounts given by the two care assistants as to the circumstances and timing of Resident A being found on the floor of her room.*

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 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. 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 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;*

- *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 your evidence that you would be willing to comply with conditions of practice.

The panel had regard to the fact that these incidents happened two years ago and that you have shown insight and accepted that your fitness to practise is currently impaired.

Balancing all of these factors, the panel determined that 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 or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because it is possible to manage the risk to the public with a conditions of practice order.

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 must not be the nurse in charge on any shift.*
2. *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.*
3. *You must work with your line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about completing observations and your record keeping. You must:*
 - a. *Send your case officer a copy of your PDP within a month of commencing any employment.*
 - b. *Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.*
 - c. *Send your case officer a report before any review hearing. This report must be written by your line manager, mentor or supervisor and show your progress towards achieving the aims set out in your PDP.*
4. *You must meet with your line manager, mentor or supervisor at least every month to discuss your clinical practice with particular reference to clinical observations, documentation and record keeping.*
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.*

- 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 training and/or supervision required by these conditions.*

The period of this order is for 12 months. The panel determined that this would be sufficient time for you to obtain employment and to continue to develop your insight and strengthen your practice.'

Decision and reasons on current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the Nursing and Midwifery Council ("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 which contained the decisions and reasons of the original panel and your undated reflective piece titled 'Reflective account 2023'. The panel has also taken account of the submissions made by Mr Gruchy on behalf of the NMC, and the submissions made by Ms Bowen on your behalf.

Mr Gruchy took the panel through the background of the case and referred it to the relevant pages within the bundle. He reminded the panel that at the original substantive hearing, the panel had outlined that the following would assist this panel:

- ‘...’
- *Your attendance at the review hearing.*
 - *Testimonials from a current or recent employer whether paid or voluntary.*
 - *Evidence of any further training which addresses the misconduct found proved.*
 - *Evidence of an updated reflective piece, reflecting on how your actions impacted on the wider profession and colleagues and details of your progress and learning.’*

Mr Gruchy submitted that your undated reflective piece is the only new evidence available to this panel today and he also acknowledged your attendance at this hearing.

Addressing the panel next on impairment, Mr Gruchy told the panel that, through your representative, you have accepted that your fitness to practise remains currently impaired. However, he further told the panel that should this be incorrect, the evidence before the panel would suggest the need to find continuing impairment.

Addressing the panel on sanction, Mr Gruchy invited the panel to continue the current conditions of practice order. He submitted that since the imposition of the conditions at the original substantive hearing, you have not worked due to the reasons set out in your undated reflective piece. However, Mr Gruchy also reminded the panel of its power to change the sanction if, after having reviewed this case and considered submissions, the panel is of the view that a conditions of practice order is no longer sufficient to protect the public and the wider public interest.

Ms Bowen confirmed to the panel that you accept that your fitness to practise is currently impaired and drew its attention to your undated reflective piece.

Addressing the panel first on your current position, Ms Bowen informed the panel that you are not currently employed, are a single parent and do not have a network of support around you. She told the panel that you have been searching for nursing roles but, the only roles that have been available have been community and district nursing, which require you to work on shifts and during the nights. Ms Bowen further told the panel that such roles would also require you to work independently and that your current conditions do not allow you to be the sole nurse on a shift. She submitted that given this and your personal circumstances, you have been unable to find a role.

Ms Bowen informed the panel that you are aware of the time that has elapsed since you last worked in a nursing capacity; however, she told the panel that until your personal circumstances, especially in relation to childcare, change, it will be difficult for you to fully comply with the conditions.

Ms Bowen told the panel that you have shown insight as you have stated in your undated reflective piece that in order for you to return to nursing, you will need to successfully complete the Return to Nursing course. She told the panel that, at present, this is not an option for you due to your financial circumstances and childcare commitments.

Ms Bowen invited the panel to continue the order for a further period of 3 years. She submitted that this time would allow you sufficient time to take steps enabling you to comply with the conditions and manage your personal circumstances. She told the panel

that although 3 years is a long period to ask for, you are aware that, should your circumstances change, you can ask the NMC for an early review.

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 took into consideration your undated reflective piece and that you do not contest that your fitness to practise is currently impaired. It noted that since the imposition of the order, you have faced some difficult personal circumstances which have rendered you unable to comply with the conditions. It noted the insight you expressed in the reflective piece and through your representative regarding the Return to Practice course.

However, the panel noted that you resigned from your post in July 2019 and that since the imposition of the substantive order, you have not worked in a nursing capacity. The panel also noted that there is no evidence before it today to show any further training you have carried out which addresses the misconduct found proved. It also noted that you accept that your fitness to practise remains impaired. On this basis, the panel was of the view that there remains a risk of harm to the public should you be allowed to practice without restriction. The panel therefore decided that a finding of continuing impairment is necessary on the ground 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 performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also necessary.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no further action but concluded that this would be inappropriate. Taking no further action would not restrict your practice and would therefore not protect the public from the risk of harm posed by your misconduct. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It considered the imposition of a caution order but again determined that this would be inappropriate for the same reasons.

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 noted that due to your personal circumstances, you have not been able to engage with the substantive conditions of practice order. However, it noted that there is no information before it today to suggest a breach of any conditions, increase in risk or material change to your circumstances. The panel noted the submissions of Ms Bowen, who invited the panel to extend the order for a further period of 3 years to allow you sufficient time to engage with the conditions, manage your personal circumstances and undertake the Return to Practice course. The panel also noted that in asking for a period of 3 years, you had considered your circumstances in line with the NMC's obligations and had reached an insightful request. Therefore, the panel was satisfied that a conditions of practice order, on the same terms as previously, continued to be the appropriate and proportionate order which would protect the public and the wider public interest.

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.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 3 years, which will come into effect on the expiry of the current order, namely at the end of 2 May 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 not be the nurse in charge on any shift.
2. 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.
3. You must work with your line manager, mentor or supervisor to create a personal development plan (PDP). Your PDP must address the concerns about completing observations and your record keeping. You must:
 - a. Send your case officer a copy of your PDP within a month of commencing any employment.
 - b. Meet with your line manager, mentor or supervisor at least once a month to discuss your progress towards achieving the aims set out in your PDP.
 - c. Send your case officer a report before any review hearing. This report must be written by your line manager, mentor or supervisor and show your progress towards achieving the aims set out in your PDP.
4. You must meet with your line manager, mentor or supervisor at least every month to discuss your clinical practice with particular reference to clinical observations, documentation and record keeping.

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.

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 training and/or supervision required by these conditions.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 2 May 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 you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at the review hearing.
- Testimonials from a current or recent employer whether paid or voluntary.
- Evidence of any further training which addresses the misconduct found proved and how you have kept up to date with your knowledge of nursing practice.
- Evidence of an updated reflective piece, reflecting on how your actions impacted on the wider profession and colleagues and details of your progress and learning. The reflective piece should also mention the steps you are planning to take to return to nursing.

This will be confirmed to you in writing.

That concludes this determination.