

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

**Substantive Order Review Hearing  
Wednesday 17 May 2023**

Virtual Hearing

**Name of Registrant:** Ekerette James Ubom

**NMC PIN** 13G0417E

**Part(s) of the register:** RNMH, Registered Nurse- Mental Health  
(May 2014)

**Relevant Location:** Colchester

**Type of case:** Misconduct

**Panel members:** Jane Kilgannon (Chair, lay member)  
Amanda Revill (Registrant member)  
Jennifer Portway (Lay member)

**Legal Assessor:** David Swinstead

**Hearings Coordinator:** Yewande Oluwalana

**Nursing and Midwifery Council:** Represented by Terence Merck, Case Presenter

**Mr Ubom:** Present and unrepresented at today's hearing

**Order being reviewed:** Conditions of practice order (9 months)

**Fitness to practise:** Impaired

**Outcome:** **Conditions of practice order (9 months) to come into effect on 27 June 2023 in accordance with Article 30 (1)**

## **Decision and reasons on application for hearing to be held in private**

During the course of the hearing, the Chair requested that matters relating to your health be held in private. The proposal was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Merck on behalf of the Nursing and Midwifery Council (NMC) indicated that he supported the proposal.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session when matters relating to your health are mentioned.

## **Decision and reasons on review of the substantive order**

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

This order will come into effect at the end of 27 June 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of nine months by a Fitness to Practise Committee panel on 26 November 2021. This was reviewed on 19 August 2022 and the Fitness to Practice Committee panel extended the substantive conditions of practice order for a further nine months.

The current order is due to expire at the end of 27 June 2023.

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

The charges considered by the original panel were as follows:

*'That you, a registered nurse:*

1. *On or around 14 May 2017, when Resident A's condition deteriorated, and before they had died, did not:*
  - a. *Call an ambulance (proved)*
  - b. *Call a GP (proved)*
  - c. *Call the Hospital (proved)*
  - d. *Take vital signs observations (proved)*
  
2. *On or around 14 May 2017, in relation to Resident A did not:*
  - a. *Record vital signs observations in Resident A's notes and records (proved)*
  - b. *Record any telephone calls you had made in Resident A's notes and records (proved)*
  - c. *Record any other actions that you had taken as a result of Resident A's deterioration (not proved)*

*Make any entries in Resident A's notes and records (proved)*

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

*'The panel noted that the original panel found that Mr Ubom had demonstrated some remorse towards Resident A's family, was developing insight and taking some steps towards remediation through general training.*

*In consideration of whether Mr Ubom has strengthened his practice the panel was of the view that some knowledge of care of the elderly had been provided however it was not sufficiently personalised or focused on the charges proved. The panel was of the view that Mr Ubom has not provided any evidence of improving insight which addresses the impact of his misconduct on the profession or the residents concerned.*

*The panel was of the view that there is no information to say whether Mr Ubom is working and as such no evidence of any references, testimonials or training were before it today in relation to his nursing practice in general*

*or the concerns raised in the charges specifically. The panel determined that there is a risk of repetition of these very serious incidents and the risk to the public remains. The panel determined that public confidence would be undermined if it did not make a finding of impairment.*

*The panel determined that the 'reflection' provided is insufficient to address the serious charges proven and does not demonstrate how Mr Ubom would manage a dying patient in future. The panel was of the view that there remains significant public protection and public interest issues due to Mr Ubom's misconduct and his ability to work with patients and provide safe end of life care.*

*The panel was of the view that Mr Ubom could have strengthened his practice had he followed the conditions of practice imposed, however he has not engaged or provided any evidence of compliance with the conditions. The panel has no information before it to indicate whether Mr Ubom is working and therefore decided that a finding of continuing impairment is necessary on the grounds of public protection and also in the wider public interest.*

*The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.*

*For these reasons, the panel finds that Mr Ubom's fitness to practise remains impaired.'*

The first reviewing panel determined the following with regard to sanction:

*'The panel next considered whether imposing a further or varied conditions of practice order on Mr Ubom'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 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 the misconduct related to poor judgement rather than clinical competence. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.*

*The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate at this stage and would not be a reasonable response in the circumstances of Mr Ubom's case.*

*Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of nine months, which will come into effect on the expiry of the current order, namely at the end of 27 September 2022. It decided to confirm the following conditions which it considered are appropriate and proportionate in this case:*

*The panel determined that the following conditions remain 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 your line manager (who must be registered with the NMC) or someone that your line manager deems suitably qualified. At a minimum your supervision must consist of fortnightly meetings to discuss your clinical caseload and to review your record keeping. The meetings must be documented, recording what was discussed.*
  
2. *You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and identifying care of a deterioration patient. You must:*
  - a) *Send your NMC case officer a copy of your PDP within 2 months of these conditions taking affect.*
  - b) *Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*
  - c) *Send your NMC case officer a report from your supervisor every 3 months. This report must show your progress towards achieving the aims set out in your PDP.*
  
3. *You must produce a written reflective piece of work which demonstrates your insight into your professional development in respect of the charges and demonstrates how you have since strengthened your practice. You must send your NMC case officer this reflective piece of work 7 days before the review hearing or meeting.*
  
4. *You must keep the NMC 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 the NMC 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 including your supervisor.*
  - 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 NMC 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 NMC 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.'*

*This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely*

*the end of 27 September 2022 in accordance with Article 30(1).*

*Before the end of the period of the order, a panel will hold a review hearing to see how well Mr Ubom 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:*

- Engagement and attendance at the next review hearing*
- Testimonials and references*

## **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 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, your supervision documentation, your reflective accounts, and a thank you note from the family of one of your patients. The panel took account of your evidence and your submissions. It also has taken account of the submissions made by Mr Merck.

Mr Merck submitted that you remain impaired and that the existing substantive conditions of practice order should be extended. He provided the panel with the background of the case.

Mr Merck referred to the documents within the bundle and stated that the supervisor evaluation documents that have been provided by your employer do not show that your



practice has been strengthened or the concerns have been addressed. He said that since the last review there has been no material change in circumstances and that the current conditions remain necessary to meet the seriousness of the concerns.

Mr Merck submitted that there has been compliance with some of the conditions. He referred to your reflective account which considered the incident that took place in 2017, however Mr Merck said your account was highly ruminative and did not address the necessity to prioritise a patient at risk. Mr Merck considered that there is a substantive discussion about what happened, your shortcomings at the time and what you would have done differently in the circumstances in the reflective account, but he said there is insufficient focus on these points within your reflective account.

Mr Merck indicated that there are references to certain issues at your current employment and concerns about the working environment, however Mr Merck said it was up to you to show remediation and insight in the circumstances that you work in.

Mr Merck submitted that you are still impaired on the ground of public protection and also otherwise in the wider public interest. He submitted that the current conditions of practice remain the appropriate order.

The panel also had regard to your oral evidence given under oath.

You told the panel about your current circumstances at work and that you have been doing your job professionally. However, you said that you feel your employer is treating you with impunity and taking advantage of you, due to you being under restrictions with the NMC.

You said that the circumstances at work led to an incident with a manager. You felt that the behaviour of the manager was undermining you doing your job, and this is very stressful at times. [PRIVATE]. You said that you are not worried about the conditions on your registration, but you are worried about where you are working.

Following questions from Mr Merck, you said that you would like the restriction to be removed that limits you to your current employer and that you would like the possibility to look for another job. The legal assessor read the conditions of practice to you and clarified

that there was no restriction on you seeking employment elsewhere and that the only relevant condition was that you would need to notify the NMC of the change of employment.

The panel also asked you questions regarding supervision and what that has consisted of. You said that it was fortnightly on Mondays with your line manager. However, this has not been happening recently and that you have approached your line manager but were told there was no problem and to continue with your work. You said that you had an appraisal last week, which is yearly and that this was perfect. However, you were not able to provide a copy to the panel today. You said the appraisal is carried out with all staff.

Following a further question from the panel regarding training and development, you said that you have undertaken internal training including the following: fire training; mental health awareness, dementia awareness, insulin awareness and documentation awareness and that you have the certificates at home but did not provide anything to the panel today.

A panel member asked about the staffing level and the level of support you receive at work. You said that two nurses work, as there are two floors, and you have the line manager or home manager working also. You said the nurses and care staff support you. You said you previously worked on nights for three years but have been moved to dayshifts so that you have more support available.

You told the panel that you have been in similar situations like the incident on 14 May 2017. You said you called the ambulance immediately and while they were attending to the patient, you were writing in the patient's records.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had insufficient insight. At this hearing the panel noted the new evidence. It had sight of the supervision records from August 2022 to November 2022, which provided a mixed picture and included concerns relating to escalating a matter and record keeping. Your reflective account had demonstrated some insight, however there was not enough focus on what you had learnt from the incident and some points were generic and not specific enough to address the concerns raised.

The panel had regard to your oral evidence and what you said you have done differently since you have encountered a similar situation and noted that you would call an ambulance immediately. It noted that you mentioned undertaking training, however there were no certificates or similar independent evidence of your training before today's panel to demonstrate this fact. The panel noted that you are still working and the NMC have not mentioned any other issues raised against you. The panel also considered that Condition 1 of your conditions of practice order has not been complied with, given that the last supervision report provided to the NMC was dated November 2022. You told the panel that no supervision meetings have taken place since that time, despite your request that they should take place. Therefore, there is no independent evidence before the panel to support your assertion that you have strengthened your practice.

Taking everything into consideration, the panel determined that there was insufficient evidence before it, to demonstrate that you have fully strengthened your practice or remediated the concerns raised. It considered that you are developing insight and have been able to say what you would do differently, however it was concerned that there was no independent evidence from your line manager in the form of a report or testimonials from colleagues that demonstrate that you have strengthened your practice and remediated the concerns raised. Therefore, the panel determined that a finding of current impairment is necessary.

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 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 action but concluded that this would be inappropriate in view of the seriousness of the case and the finding that your fitness to practise is impaired and this would not protect the public. 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 imposing a further or varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that you have been complying with the majority of the current substantive conditions of practice order and have been engaging with the NMC and are willing to comply with the conditions imposed.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there was, no deep-seated attitudinal problems and that the misconduct related to poor judgement rather than clinical competence. In this case, there are conditions that could be formulated which would protect patients during the period they are in force.

The panel considered that the current conditions are appropriate to the seriousness of the case and proportionate as you are still able to work and develop your insight and strengthen your practice.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case because you are currently in employment and have been engaging with the NMC.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to confirm a conditions of practice order for a period of nine months, which will come into effect on the expiry of the current order, namely at the end of 27 June 2023. 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 must ensure that you are supervised by your line manager (who must be registered with the NMC) or someone that your line manager deems suitably qualified. At a minimum your supervision must consist of fortnightly meetings to discuss your clinical caseload and to review your record keeping. The meetings must be documented, recording what was discussed.
2. You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and identifying care of a deterioration patient. You must:

- a. Send your NMC case officer a copy of your PDP within 2 months of these conditions taking effect.
  - b. Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.
  - c. Send your NMC case officer a report from your supervisor every 3 months. This report must show your progress towards achieving the aims set out in your PDP.
3. You must produce a written reflective piece of work which demonstrates your insight into your professional development in respect of the charges and demonstrates how you have since strengthened your practice. You must send your NMC case officer this reflective piece of work 7 days before the review hearing or meeting.
4. You must keep the NMC 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 the NMC 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 including your supervisor.

- 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 NMC 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 NMC 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 nine months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 27 June 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 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:

- Ongoing engagement and attendance
- References and testimonials which may include from your employer, colleagues and anyone within your care
- Evidence of your most recent appraisal
- In accordance with Condition 1, notes from your supervision meetings
- In accordance with Condition 3, an updated reflective piece giving examples of how you have strengthened your practice
- Evidence of professional development, including documentary evidence of completion of any training undertaken.

This will be confirmed to you in writing.

That concludes this determination.