

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

**Substantive Order Review Hearing  
Tuesday, 7 November 2023**

Virtual Hearing

**Name of Registrant:** Deborah Jane Owen

**NMC PIN:** 8610756E

**Part(s) of the register:** Registered Nurse - Learning Disabilities  
RNLD (February 1990)

**Relevant Location:** Staffordshire

**Type of case:** Misconduct

**Panel members:** Bernard Herdan (Chair, Lay member)  
Susan Tokley (Registrant member)  
Louise Guss (Lay member)

**Legal Assessor:** John Bassett

**Hearings Coordinator:** Christine Iraguha

**Nursing and Midwifery Council:** Represented by Jemima Lovatt, Case Presenter

**Miss Owen:** Not present and unrepresented

**Order being reviewed:** Suspension order (3 months)

**Fitness to practise:** Impaired

**Outcome:** **Suspension order (6 months) to come into effect at the end of 16 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 Miss Owen was not in attendance and that the Notice of Hearing (NOH) had been sent to Miss Owen's registered email address by secure email on 6 October 2023.

Ms Lovatt, on behalf of the Nursing and Midwifery Council (NMC), referred the panel to the witness statement from the NMC officer who confirmed that the NOH was sent on 6 October 2023. She said that despite the typographical error in the NOH, Miss Owen has responded to the NMC regarding the hearing today. She 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 Miss Owen's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

The panel noted the typographical error in the NOH (stating that the date of the hearing was Thursday 7 November 2023 instead of Tuesday 7 November 2023). It decided that this error was not relevant in view of Miss Owen's correspondence with the NMC both by email on 6 November 2023 and a telephone note on 7 November 2023. It was satisfied that Miss Owen has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34 of the Rules and that she was clear that the hearing would take place on Tuesday 7 November 2023.

## **Decision and reasons on proceeding in the absence of Miss Owen**

The panel next considered whether it should proceed in the absence of Miss Owen. The panel had regard to Rule 21 and heard the submissions of Ms Lovatt who invited the panel to continue in the absence of Miss Owen. She referred to the case of *R v Jones (Anthony*

*William*) (No.2) [2002] UKHL 5 and submitted that Miss Owen had voluntarily absented herself.

Ms Lovatt referred the panel to the email from Miss Owen dated 6 November 2023 and to the telephone note on 7 November 2023 and submitted that the correspondence shows that Miss Owen had taken a deliberate decision not to attend the hearing today and invited the panel to proceed.

The panel accepted the advice of the legal assessor who referred to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Miss Owen. In reaching this decision, the panel has considered the submissions of Ms Lovatt, the correspondence from Miss Owen, and the advice of the legal assessor. It has had particular regard to the 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 Miss Owen;
- Miss Owen in a telephone note on the morning of 7 November 2023 informed the NMC that she was not attending the hearing today;
- Miss Owen attended the previous hearing and is aware of the procedure;
- 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 Miss Owen.

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

The panel decided to extend the current suspension order for a further period of 6 months.

This order will come into effect at the end of 16 December 2023 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive suspension order originally imposed for a period of six months by a Fitness to Practise Committee panel on 16 February 2023. On 8 August 2023, this order was reviewed, and the panel extended it for a further three months.

The current order is due to expire at the end of 16 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, on or around 5 April 2021:*

1. *When Resident A became agitated at around 18:00 said to Resident A:
  - a) "did your dad abuse you?" or words to that effect; **[PROVED]**
  - b) "I've worked in the crazy house before" or words to that effect. **[PROVED]***
2. *When Resident A became agitated at sometime after 18:30:
  - a) did not utilise the interventions recommended in Resident A's care plan; **[PROVED]**
  - b) put Resident A on the floor. **[PROVED]***
3. ...
4. *Did not record or ensure it was recorded in Resident A's care notes that Resident A had been put on the floor. **[PROVED]***
5. *Your actions in charge 4 were dishonest in that you intended any subsequent reader of the records to be misled about what had happened. **[PROVED]***

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

*'The panel considered that the original panel found that you demonstrated very little insight into the impact of your actions. At this hearing, the panel noted that you did not provide a written reflective piece addressing the impact your actions had on patients, colleagues and the wider public. Whilst you did provide evidence under affirmation outlining the reflection you have undertaken since the misconduct the panel was of the view that the focus of your reflection was on the impact upon yourself and your family rather than resident A, your colleagues, and the reputation of the profession. The panel noted your reflections regarding the use of non-verbal communication and body language. However, the panel was of the view that you did not demonstrate that you have gained insight into how learning from the use of non-verbal communication would be incorporated to strengthen your practice in relation to effective communication with patients and the appropriate use of language in clinical settings.*

*The panel found that you have not yet fully demonstrated effective steps taken to evidence competence in the areas of failing in your nursing practice. Whilst you referenced training in Reiki and British Sign Language the panel had no documentary evidence of these courses before it. In addition, the panel determined that these courses did not fully address all areas of concern around your nursing practice.*

*The panel noted the testimonials provided by colleagues which are favourable and attest to your nursing practice. However, the panel was of the view that these are of limited relevance as there were none from a previous employer.*

*In light of this, the panel had insufficient evidence before it to allay its concerns that you may currently pose a risk to patient safety. The panel determined that there is a risk of repetition should you be permitted to practise as a registered nurse without restriction. Therefore, the panel decided that a finding of 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 your fitness to practise remains impaired. ‘*

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

*‘The panel next considered whether 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 that this was a case which involved evidence of dishonesty and attitudinal failures relating to fundamental aspects of nursing skills. The panel considered that it has not yet been presented with evidence demonstrating you had strengthened your practise or shown full insight into your actions. The panel was therefore not able to formulate conditions of practice that would adequately address the concerns relating to dishonesty and attitudinal concerns. The panel bore in mind the seriousness of the facts found proved at the original substantive hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow you further time to fully reflect on your previous failings. The panel concluded that a further three months suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and take steps to strengthen your practice. The panel determined that a suspension order would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of three months.*

*The panel noted that should circumstances change, you are entitled to apply for an early review of the order.*

*This suspension order will take effect upon the expiry of the current suspension order, namely the end of 16 September 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.*

*Any future panel reviewing this case would be assisted by:*

- *Your continued engagement with the NMC and attendance at a future review hearing.*
- *Testimonials from previous employers. This may include historic testimonials from your work in learning disability units.*
- *Documentary evidence of training on patient documentation, effective communication with patients and the appropriate use of language in clinical settings.*
- *An updated written reflective statement that addresses the impact of your misconduct on Resident A, your colleagues and the reputation of the profession. It should also address how you will incorporate your learning from the training courses in your future practice.'*

## **Decision and reasons on current impairment**

The panel has considered carefully whether Miss Owen's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all the documentation before it, including the NMC bundle, the correspondence from Miss Owen, and has taken account of the submissions made by Ms Lovatt on behalf of the NMC.

Ms Lovatt said the purpose of this review hearing is for the panel to assess whether the substantive order currently in place or a different order is still needed to protect the public from a risk of harm and also to maintain public confidence in the nursing profession, and to declare and uphold proper standards of conduct and behaviour. She submitted that the NMC is seeking an extension of the suspension order to give Miss Owen more time to comply with the suggestions from the previous panels. She stated that a striking off order is not appropriate or proportionate today because Miss Owen is [PRIVATE] and the NMC case officer would prefer to engage with her further to determine her plans going forward. She provided the panel with the background of the case, the charges found proved, and the findings of the previous panels.

Ms Lovatt submitted that there is insufficient evidence to allay the concerns previously highlighted; there is no information regarding insight, training, or reflection, and as a result the issue regarding dishonesty remains, which is difficult to remediate. She informed the panel that none of the suggestions from the previous panels have been taken up by Miss Owen. She said that a further period of suspension is proposed to give Miss Owen an opportunity to engage and address the issues identified. Given the content and nature of the information contained within the recent correspondence from Miss Owen, Ms Lovatt stated that there may be further discussions between the NMC and Miss Owen to determine how she wants to move forward in addressing the concerns raised with her practice. She reiterated that a strike off order is not appropriate or proportionate today.

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

The panel considered whether Miss Owen's fitness to practise remains impaired.

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. In this regard, the panel considered the judgment of Mrs Justice Cox in



the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927. 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all four limbs remain engaged.

The panel noted that the last reviewing panel found that Miss Owen had not provided a written reflective piece addressing the impact of her actions on patients, colleagues and the wider public. At this hearing, the panel determined that it has received no further information to demonstrate any development of insight from Miss Owen.

In its consideration of whether Miss Owen has taken steps to strengthen her practice, the panel noted that there has been no engagement at all from Miss Owen in her recent correspondence with the NMC in regard to the concerns raised and therefore no evidence to demonstrate that she has strengthened her practice.

The panel noted that it had no evidence before it that Miss Owen has undertaken any courses to remedy the failings identified at the substantive hearing, or evidence to show how she has kept up to date with her nursing practice since the substantive hearing. The panel considered the telephone note on 7 November 2023 from Miss Owen to the NMC stating that she is struggling to find employment and [PRIVATE]. The panel therefore found that, although remediable, Miss Owen had not remedied the failings, and as such there remains a risk of repetition, and a risk of harm.

The panel determined that there was no material change in the circumstances of this case since the last hearing and in the level of risk previously identified. In light of this, this panel determined that Miss Owen remains 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 Miss Owen fitness to practise remains impaired.

### **Decision and reasons on sanction**

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

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Owen's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Owen's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified, which included dishonesty in a clinical context. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether conditions of practice on Miss Owen's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable, and workable. The panel bore in mind the seriousness of the facts found proved at the original hearing and concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest. It was not satisfied that it could formulate conditions of practice that would adequately address the concerns relating to Miss Owen's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Miss Owen further time to fully engage with the recommendations made by the previous panels, reflect on her previous failings and demonstrate safe practice. It considered that Miss Owen needs to gain a full understanding of how the dishonesty of one nurse can impact upon the nursing profession as a whole and not just the organisation that the individual nurse is working for.

The panel noted the email from Miss Owen to the NMC on 6 November 2023 stating: *'Have decided that I can no longer continue with this process. [PRIVATE] and I have decided to discontinue my PIN and wish for this Information to be passed to*

*the NMC. I have tried as requested to contact people from my past employment and due to the longevity of my service people are no longer available to give references [sic] [PRIVATE] and I feel that I'm no longer able to 1 practice as a registered nurse and 2 continue with this process.'* In view of this, the panel accepted Ms Lovatt's submissions that Miss Owen needs to engage further with the NMC to determine her plans for the future.

The panel concluded that a further suspension order would be the appropriate and proportionate response and would afford Miss Owen adequate time to further develop her insight and take steps to strengthen her practice. It would also give Miss Owen an opportunity to approach past and current professional colleagues to attest to her honesty and integrity in her workplace assignments since the substantive hearing. Alternatively, it could give Miss Owen the time which could be needed to reflect further on whether or not she wishes to return to nursing and - if not - to engage with the NMC to agree a way forward.

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. The panel determined to impose a suspension order for the period of six months, this will provide Miss Owen with an opportunity to engage with the NMC with regard to her future intentions. It considered this to be the most appropriate and proportionate sanction available.

The panel noted that should circumstances change, Miss Owen is entitled to apply for an early review of the order.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 16 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.

Any future panel reviewing this case would be assisted by:

- Engagement with the NMC and attendance at a future review hearing.
- Testimonials from previous employers. This may include historic testimonials from your work in learning disability units.
- Documentary evidence of training on patient documentation, effective communication with patients and the appropriate use of language in clinical settings.
- An updated written reflective statement that addresses the impact of your misconduct on Resident A, your colleagues and the reputation of the profession. It should also address how you will incorporate your learning from the training courses in your future practice.

This will be confirmed to Miss Owen in writing.

That concludes this determination.