

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

Substantive Order Review Meeting

8 August 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: Elen Howitt
NMC PIN: 90A2995E
Part(s) of the register: Sub Part 1
RNA: Adult nurse (24 January 1993)
Area of Registered Address: England

Type of Case: Misconduct/Conviction

Panel Members: David Boden (Chair, Lay member)
Michael Murphy (Registrant member)
Anne Phillimore (Lay member)

Legal Assessor: Barrie Searle
Panel Secretary: Lucy Eames

Order being reviewed: Suspension Order (4 months)

Fitness to Practise: Impaired
Outcome: Striking-off order to come into effect at the end of 24 September 2019 in accordance with Article 30 (1)

Decision on Service of Notice of Meeting:

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004*, as amended state:

'11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The letter of notice of this substantive meeting was sent to Ms Howitt's address on the register on 2 July 2019. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

Decision and reasons on review of the current order:

The panel decided to impose a striking off order. This order will come into effect at the end of 24 September 2019 in accordance with Article 30 (1) of the *Nursing and Midwifery Order 2001 (as amended)* (the Order).

This is the fourth review of a suspension order, originally imposed by a Fitness to Practise panel on 25 October 2017 for six months. The order has been reviewed twice, on 12 April and 12 October 2018, and was extended for a period of six months on both occasions. It was reviewed again on 30 April 2019 and the suspension order was extended for four months. The current order is due to expire at the end of 24 September 2019.

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:

1. Whilst employed as a Staff Nurse by Morfa Newydd Care Home attended work having consumed alcohol on one or more of the following occasions:

1.1. ...

1.2. On 12 November 2016

And, in light of the above, your fitness to practise is impaired by reason of your misconduct in relation to charge 1.

AND, that you a registered nurse:

2. Were convicted on 5 January 2017 at North East Wales Magistrates' Court of driving a motor vehicle after consuming so much alcohol that the proportion of it in your blood exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988

And, in light of the above, your fitness to practise is impaired by reason of your conviction in relation to charge 2.

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

The panel considered whether your fitness to practise remains impaired.

The panel took account of your evidence and was of the view that, for the most part, it was helpful and credible. It was apparent that you attempted to explain what had happened although you appeared to be somewhat defensive at times especially when talking about the events leading to your arrest and conviction. The panel did not find your evidence to be entirely convincing on this aspect. However, the panel wished to commend you for attending and speaking to it in the candid manner that you did.

Regarding your insight, the panel noted that you concentrated on the impact that your actions had on yourself rather than how it affected your colleagues, patients and the wider reputation of the nursing profession. Further, the panel took into account that you seemed unsure whether you were ready to return to a nursing role, having at first told the panel that you were not yet ready but then stating that you were looking to return in a part time position.

The panel noted that you were remorseful for what happened and also took into account that your health and personal life appear to have improved. However, it also took into account that you did not provide any independent evidence that this was the case. The panel noted that you have not worked in a healthcare setting for some time but have volunteered at your local church and completed your community service as part of your sentence. The panel noted that you had not provided references from any unpaid employment or as to your character. It further noted that you did not provide a reflective piece demonstrating your insight as requested by the previous panels.

The last panel determined that you were liable to repeat matters of the kind found proved. This panel has heard evidence from you and took the view that you displayed a degree of insight into the dangers of attending work under the influence of alcohol, but it was not convinced at this stage that you would not repeat your actions in this respect. [PRIVATE]. In light of this the panel determined that you remain 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 your fitness to practise remains impaired.

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

The panel next considered making a conditions of practice order. You have demonstrated a willingness to return to nursing but have failed to provide evidence of your current situation including references from unpaid work or a reflection to demonstrate your insight into the consequences of the matters that led to your NMC referral. It was not clear to the panel whether this is due to a lack of understanding of the NMC process or a general lack of compliance on your behalf. The panel was encouraged by your evidence that you are now ready to provide information relating to, amongst other things, your health but took the view that it could not be certain that the public would be sufficiently protected if you were currently permitted to practise as a Registered Nurse under conditions of practice without this evidence being produced. On this basis, the panel concluded that a conditions of practice order is not currently practicable. In all the circumstances the panel considered that a conditions of practice order is not the appropriate order in this case. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest at this time.

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 and also gather necessary supporting information for a future reviewing panel. It considered that you need to gain a full understanding of the impact that your actions had on the patients in your care, your colleagues, the nursing profession and the NMC as your regulator. The panel concluded that a further four month suspension order would be the appropriate and proportionate response and would afford you adequate time to further develop your insight and remediation and to provide evidence relating to your current health status. It would also give you an opportunity to approach colleagues past and present to provide testimonials commenting on your character and performance.

The panel went on to consider making a striking off order but was of the view that it would be disproportionate at this time in light of your improved health and increasing willingness to engage with the NMC.

The order will be reviewed shortly before the end of the period of suspension. All sanctions will be available to the panel at this stage.

The following would assist the next reviewing panel:

- *Your attendance in person at the review hearing and continued engagement with the NMC;*
- *[PRIVATE]*
- *References and testimonials from any work paid or unpaid;*
- *A reflective piece, based on a recognised reflective tool, focusing on how your actions may have affected the reputation of the nursing profession and public confidence in the profession;*
- *Information on any continued professional development and any other learning undertaken relating to nursing.*

Decision on current fitness to practise

The panel has considered carefully whether Ms Howitt'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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including the main bundle, a statement from Ms Howitt and a statement from her representative.

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 noted the statement from Ms Howitt which said:

'Please be advised that I no longer wish to pursue my case to be reinstated onto the nursing register.

This decision has not been taken lightly. It has been over two and a half years since I last worked as a nurse, and I just feel that I have lost a lot of confidence in my abilities, and that I no longer have the passion or desire needed to work as a nurse again. Until recently my intention was always to look at going back into Nursing if possible , it was a big thing for me to attend a hearing by phone and I came away feeling positive about getting back into nursing, since then the worry of attending a hearing and the thought of the stresses and strains of going back into nursing have made me change my mind, given time I may have changed my mind on this, but realise that the case can't go on forever and I need to put some closure on this so I can move on with my life.

I have only done voluntary work since leaving my last nursing job, I did some voluntary work at a charity shop when I lived Connah's Quay. Since moving to Sandbach I have not worked but kept myself busy helping out at the local church near to where I live. My plans for the future is to start to look for work, before I went into nursing a work as a pharmacy assistant I plan to look into going back into this, and if needed looking a refresher course to help me to do this.

I fully understand the effect of my drink driving charge had of the nursing profession, this is the biggest regret of my life. I wasn't in a good frame of mind at the time, but there is no excuse for this. How this was viewed at the time gave the totally wrong view on nursing profession, I did talk on this at the last hearing.

I would also just like to say that it is disappointing that some people's testimonies, and allegations, with no actual proof or evidence against myself can have such an effect. The nursing home also failed to implement correctly their own policies and procedures in regard to any concerns that may have been raised.' (sic)

It further noted Ms Howitt's representative's statement which said:

'It has been a very difficult two and a half year for Kay, however she as pulled herself together, most of this by herself, the case itself was a low point for her , she fully accept the drink driving charge, however she found it very difficult to accept the other charges one was from 6 months previous which was not proven the other which was 1 month previous which was found to be proven, Neither of these Kay was told about at the time by the care home, the first she heard about these was from a letter from the NMC. At the time of the case Kay was not well enough to attend I think if she had then thing would have been different. However we found the outcome of the case very fair as this offered Kay the chance to go back into nursing, which is one on the main reasons we didn't appeal the result the other being Kay's health.

I know Kay has been an excellent nurse having heard how people talk about her and is still ask for her advice, I believe in the future given time she would have gone back into nursing. She attended the last hearing by phone which was a big step for her. It was a big decision for her to make not carry on to get back into nursing but I think the worry of thing were not helping and she decided it was time to move on.

Kay is looking forward to her future and I hope the panel can see this and allow to leave in a dignified way.' (sic)

The panel noted that Ms Howitt has expressed she no longer wants to pursue a nursing career and has not worked in the care sector for over two years. It was of the view that Ms Howitt's insight into the incidents remain lacking and she has not fully complied with all of the recommendations from the previous panel. [PRIVATE]

In light of this the panel determined that there remains a risk of repetition and therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel had borne in mind that its primary function was 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 required.

For these reasons, the panel finds that Ms Howitt's fitness to practise remains impaired.

Determination on sanction

Having found Ms Howitt'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 or to impose a caution order but concluded that these would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action or impose a caution order.

The panel considered substituting the current suspension order with a conditions of practice order. However, Ms Howitt has expressed she no longer wants to be a nurse, therefore is unlikely to engage with conditions. Further the panel was of the view that, given Ms Howitt's continued lack of insight into the charges found proved, conditions of practice would not sufficiently protect the public or address the public interest.

The panel next considered imposing a further suspension order. The panel noted that Ms Howitt no longer wants to be a nurse and has already had a long suspension imposed on her practice. The panel was of the view that Mrs Howitt would need to demonstrate considerable insight but it appears clear that she does not want to continue with these proceedings. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Ms Howitt from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This decision will be confirmed to Ms Howitt in writing.

That concludes this determination.