

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

**Substantive Order Review Hearing
Thursday, 28 May 2020**

Virtual Hearing

Name of registrant: Louise Anne Marriott

NMC PIN: 08F0028E

Part(s) of the register: Registered Nurse – Sub-part 1
Adult Nursing – September 2008

Area of registered address: England

Type of case: Misconduct

Panel members: Derek McFaul (Chair, Lay member)
Andrew Wimbor (Registrant member)
Natasha Duke (Registrant member)

Legal Assessor: Jeremy Barnett

Panel Secretary: Philip Austin

Nursing and Midwifery Council: Represented by Rachael Culverhouse-Wilson,
Case Presenter

Miss Marriott: Not present and not represented in absence

Order being reviewed: Suspension order (6 months)

Fitness to practise: Currently Impaired

Outcome: **Striking-off order to come into effect at the
end of 4 June 2020, 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 Marriott was not in attendance and that the notice of hearing had been sent in a secure and encrypted fashion to the email address that the Nursing and Midwifery Council (“NMC”) had on file on 29 April 2020.

The panel took into account that the notice of hearing provided details of the substantive order being reviewed, the time, date and venue of the hearing and, amongst other things, information about Miss Marriott’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of hearing to be deemed reasonable in the current circumstances, involving Covid-19.

Ms Culverhouse-Wilson, on behalf of the NMC, 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.

In the light of all of the information available, the panel was satisfied that Miss Marriott has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (“the Rules”).

Decision and reasons on proceeding in the absence of Miss Marriott

The panel next considered whether it should proceed in the absence of Miss Marriott.

The panel had regard to Rule 21 and heard the submissions of Ms Culverhouse-Wilson, who invited the panel to continue in the absence of Miss Marriott.

Ms Culverhouse-Wilson informed the panel that this matter was due to be considered on 27 April 2020, but on that occasion, the panel did not proceed in the absence of Miss Marriott, as she had informed the NMC case officer that she had wanted to attend the hearing but had difficulty in accessing the documents for it.

Ms Culverhouse-Wilson submitted that the NMC case officer has since contacted Miss Marriott on numerous occasions to assist her in accessing the documents sent to her electronically, both by email and by telephone. When Miss Marriott got in contact with the NMC case officer, she had indicated that she was still unable to access these documents, and requested that a hard copy of the papers be sent to her by the post. Ms Culverhouse-Wilson submitted that in light of the advice from the UK government involving Covid-19, this has not been possible to do.

In any event, Ms Culverhouse-Wilson submitted that in a telephone call with the NMC case officer on 26 May 2020, Miss Marriott confirmed that she has been able to access these documents and stated that she would contact him again, should she have any further issues. Ms Culverhouse-Wilson informed the panel that the NMC case officer did attempt to contact Miss Marriott by telephone on multiple occasions on 27 May 2020, but was unsuccessful on each occasion. However, prior to the panel commencing this morning on 28 May 2020, Miss Marriott had sent an electronic letter to the NMC case officer, confirming that she will not be in attendance today, and setting out written representations for the panel to consider at this hearing. Ms Culverhouse-Wilson also informed the panel that the NMC case officer had attempted to contact Miss Marriott by telephone on two occasions on the day of hearing at approximately 11:00 hours at the request of the panel, but was unsuccessful in both attempts.

Ms Culverhouse-Wilson submitted that, in light of the above, there is no good reason for the panel to adjourn today's hearing. She submitted that Miss Marriott is aware of today's hearing and, from her actions, has made a decision to voluntarily absent herself. Furthermore, Ms Culverhouse-Wilson submitted that an adjournment of this matter has not been requested by Miss Marriott, and it would be unlikely to secure her attendance on some future occasion.

Ms Culverhouse-Wilson submitted that Miss Marriott has a professional duty to engage with her regulator, and that the previous panel had given her a further opportunity to be able to do so. She submitted that Miss Marriott now appears to be attempting to disengage from the regulatory process.

Ms Culverhouse-Wilson submitted that there is a strong public interest in considering this matter prior to the expiry of the current suspension order, at the end of 4 June 2020. She submitted that if the panel decide not to proceed in Miss Marriott's absence, she will be permitted to return to nursing after 4 June 2020, without any restrictions imposed on her nursing registration. Ms Culverhouse-Wilson submitted that this would be contrary to the NMC's overarching objective of ensuring that the public are adequately protected.

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Marriot. In reaching this decision, the panel has considered the submissions of Ms Culverhouse-Wilson, as well as the documentation received from Miss Marriott. It also took account of the advice of the legal assessor.

The panel has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- The previous hearing listed for this matter was adjourned on 27 April 2020, in order for Miss Marriott to attend the hearing after having access the documents the NMC intended to rely on.
- Miss Marriott had been sent the NMC bundle for this hearing electronically, and that she had confirmed that she had been able to access it to the NMC case officer. The panel noted that determination of the panel on 27 April 2020, but accepted the NMC's submission that hard copies could not be sent to Miss Marriott, in light of the government's advice involving Covid-19.
- Miss Marriott had contacted the NMC on the morning of this hearing, informing it that she no longer wanted to engage.
- Further attempts were made to contact Miss Marriott at approximately 11:00 hours by the NMC case officer, but these were unsuccessful.

- No application for an adjournment has been made by Miss Marriott; and there is no reason to suppose that adjourning would secure her attendance at some future date.
- There is a strong public interest in the expeditious review of the case, taking account of the fact that the order is due to expire at the end of 4 June 2020, and that there would be insufficient time to arrange a further hearing before the date.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Marriott.

Decision and reasons on review of the substantive order

This panel decided to impose a striking-off order. This order will come into effect at the end of 4 June 2020, in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is the fourth effective review of a substantive order originally imposed by a panel of the Conduct and Competence Committee (“CCC”) on 3 March 2017. On that occasion, the panel decided to impose a conditions of practice order for a period of 12 months. This order was reviewed on 2 March 2018, where a panel of the Fitness to Practise Committee (“FtPC”) imposed a new conditions of practice order for a further period of 12 months. The order was again reviewed by an FtPC panel on 1 March 2019, where a new conditions of practice order was imposed for a period of eight months. At the last effective review of this matter on 24 October 2019, a panel of the FtPC replaced the conditions of practice order with a suspension order for six months. A review of the suspension order was due to be heard on 27 April 2020, however, on that occasion, the panel did not proceed in the absence of Miss Marriott.

The current order is due to expire at the end of 4 June 2020.

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:

1. During a night shift commencing 29 September 2015 and in respect of Resident A, you:

- a. Grabbed his arm and/or pulled him to a standing position from his chair;*
- b. Used force to walk him from his chair towards the lounge door;*
- c. Pulled him along the floor and/or along the corridor;*
- d. Pushed him into his bedroom;*
- e. Said to him “if you want to act like a child, I’ll treat you like one” or words to that effect.*

2. In respect of the incident detailed in charge 1 above, did not make a record of the incident and/or report it.

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

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

“Having heard your submissions, the panel was of the view that you have demonstrated no insight and, in light of this, you are no further along than you were at the previous review. The panel took account of your reflective piece and was of the view that rather than a reflection, it was more a summary of your version of what occurred during the incident that led to a finding of misconduct. Further, in your reflective piece you failed to reflect on the effect that your misconduct had on the patients in your care, your colleagues and the nursing profession.

The conclusion to your reflective piece was:

“This incident has made me realise how vulnerable staff can be when working on nights as a lone nurse. I feel from this incident that I would now work in an environment where there is more than one nurse on duty at time i.e a hospital or hospice setting.”

The panel was of the view that your conclusion shows that your focus is misplaced being entirely on yourself rather than the impact on others.

The panel had difficulty accepting that you were not able to follow a proper reflective model having been a registered nurse since 2008.

The panel took account of your difficulty in finding employment as a nurse, albeit that you did not provide any documentary evidence of your attempts, but had regard to the fact that you could have provided appropriate reflection from alternative employment, for example at the doctor’s surgery. The panel was of the view that you could have used examples of times that you had encountered stressful situations including challenging behaviours in this setting and how you had worked to overcome them.

The panel had regard to your submission that you have undertaken training but was not provided with any evidence of this whatsoever. Further, the panel was not provided with any testimonials from work undertaken paid or unpaid. These could have attested to your character and demonstrated a willingness to overcome your failings.

The panel took account of your continued denials in relation to your misconduct and noted that you did not appear to show any remorse for your actions.

The last panel determined that you were liable to repeat matters of the kind found proved. This panel has heard no evidence that could result in a different finding. In light of this, the panel determined that there remains a risk of repetition of the behaviour found proved. The panel 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 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 first considered whether to take no action or to make a caution order but concluded that this 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 to make a caution order.

The panel next considered the continuation of the conditions of practice order. You told the panel that you had attempted to find employment as a registered nurse but had failed due to the restriction on your practice. The panel took account of the conditions of practice that were extended by the previous panel and was of the view that these are workable. The panel found your lack of insight into your failings and lack of evidence of attempts to secure employment to be concerning. This is the third review of the order and nothing has changed in relation to your understanding of what you need to achieve to remediate your practice via reflection and learning. The panel noted that previous panels had given you assistance in what may help you to achieve this but you had not taken account of this and only provided a short account of your version of the incident. The panel was of the view that you have become entrenched in a position of denial from where you are unable to demonstrate insight or show remorse for your actions. Until you do this, you will not be able to progress.

On this basis, the panel concluded that a conditions of practice order is no longer practicable. In all the circumstances the panel considered that a conditions of practice order is no longer 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.

The panel determined therefore that a suspension order was the minimum appropriate sanction which would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for a period of six months. It considered this to be the most appropriate and proportionate sanction available and also a period of time that would allow effective reflection.

The panel seriously considered whether a striking off order would be an appropriate sanction at this point. While your distinct lack of insight could be considered to raise fundamental questions about your professionalism and the impact of your behaviour on public confidence in the profession, the panel considered that, at this stage, such an order is disproportionate.

This suspension order will take effect upon the expiry of the current conditions of practice order, namely at the end of 4 December 2019 in accordance with Article 30 (1) of the Nursing and Midwifery Order 2001.

A future panel may be assisted by:

- A comprehensive reflective piece concentrating on the impact of the charges found proved on your patients, colleagues and the nursing profession alongside how you would deal with similar testing situations in the future;*
- Testimonials in relation to your performance and character of any work paid or unpaid;*
- Evidence of any professional development undertaken particularly in relation to managing difficult and challenging situations and behaviours.”*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Marriott'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 of the documentation before it, including the NMC hearing bundle, the multiple pieces of correspondence between Miss Marriott and the NMC case officer in relation to this hearing, as well as the electronic letter sent by Miss Marriott to the NMC case officer on 28 May 2020. It has taken account of the submissions made by Ms Culverhouse-Wilson, on behalf of the NMC.

Ms Culverhouse-Wilson took the panel through the background of this case.

Ms Culverhouse-Wilson submitted that for the panel to make a finding that Miss Marriott is not currently impaired, it would have to be satisfied that the concerns identified have been remediated.

Ms Culverhouse-Wilson submitted that since the last effective review of this matter, Miss Marriott has not demonstrated any further insight, nor has she complied with the recommendations of the previous reviewing panel, despite having seven months to do so.

Ms Culverhouse-Wilson invited the panel to have regard to the electronic letter submitted by Miss Marriott on 28 May 2020. She submitted that from this, Miss Marriott does not appear to have developed her insight further, as she continues to deflect blame on to the NMC, as opposed to accepting responsibility for her own actions. In particular, she invited the panel to have regard to Miss Marriott's statement that: *"I feel that all the evidence I have provided to the NMC, either verbally, or written testimonies, and statements, along with continuous clean DBS checks and checks for me to work at the Lincoln County Court in the family section, along with no involvement by the police, CQC, or safeguarding at the time of the alleged incident. The NMC haven't taken any of this into account at any*

hearings. I also undertook further online courses, but still the NMC deem me to be “a danger to the public”, and only focused on my reflective piece not being reflective enough. [sic]. Ms Culverhouse-Wilson submitted that Miss Marriott’s insight appears to have deteriorated since the last review, and indeed the substantive hearing. She also submitted that the previous panel did take account of Miss Marriott’s concerns, as stated in its determinations.

Ms Culverhouse-Wilson also submitted that Miss Marriott is attempting to disengage from the regulatory process as she has stated *“It is after much thought that i have sadly come to the decision to hand in my pin/registration number. Nursing is something that i had always wanted to do, but feel the allegations made against me for the past four years have left me with no other options”* [sic]. Ms Culverhouse-Wilson submitted that Miss Marriott has not worked in a clinical capacity since these incidents, some five years ago, and she is currently working as an administrator at a General Practitioner’s (“GP”) surgery.

Ms Culverhouse-Wilson submitted that focused training relating to the areas of concern has not been undertaken by Miss Marriott.

In light of all the above, Ms Culverhouse-Wilson submitted that a risk of repetition remains in this case. She invited the panel to find that Miss Marriott’s fitness to practise as a registered nurse remains impaired on the grounds of public protection and it is also in the public interest.

Ms Culverhouse-Wilson submitted that any sanction imposed is always a matter for the panel to consider. However, she drew the panel’s attention to the third reviewing panel’s determination, in which Miss Marriott was warned that a future reviewing panel may consider a more severe sanction, should progress not be made.

Ms Culverhouse-Wilson submitted that in having regard to Miss Marriott’s unwillingness to remediate, the deterioration in her insight, and her new statement that she now does not want to return to the nursing profession, the time may have come for a striking-off order to be imposed, as a further suspension order may not serve any useful purpose. Ms Culverhouse-Wilson submitted that this matter cannot continue on indefinitely.

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 Miss Marriott's fitness to practise remains impaired.

The panel had regard to the substantive hearing decision, as well as the subsequent reviews involved in this case.

The panel considered the misconduct identified to be serious, and to relate to Miss Marriott's conduct and behaviour, in the performance of her role as a registered nurse.

The panel had sight of Miss Marriott's electronic letter dated 28 May 2020, which had been submitted for the panel's consideration. However, in taking account of this during its deliberations, the panel was of the view that Miss Marriott had not been able to demonstrate that her insight into her misconduct had improved. Instead, the panel considered her insight to have reduced, as Miss Marriott now appears to deflect blame on to others for her being unable to convince a panel that her fitness to practise as a registered nurse is no longer impaired, instead of focusing on the issues at hand. The panel noted that Miss Marriott has always denied the facts found proved, has not expressed any remorse for her actions, has not apologised to Resident A, or given any consideration to how her actions could have impacted upon Resident A, who was an extremely vulnerable patient. She has not considered how actions impacted upon her colleagues, the nursing profession, or the wider public confidence in the profession, who expect nurses to treat patients with kindness and compassion. Miss Marriott still does not appear to understand that her actions would be considered to be deplorable by members of the public.

The panel noted that Miss Marriott had not complied with any of the recommendations stipulated by the previous reviewing panel, nor has she provided any references or testimonials from any recent employment.

Whilst Miss Marriott had provided a previous panel with evidence of training that she had undertaken, this panel did not consider this to be sufficient in mitigating the risks identified. The panel noted that Miss Marriott has not worked as a registered nurse for a significant period of time, and there was no recent evidence of her keeping her nursing practice up to date.

In the absence of any evidence to the contrary, the panel could not be satisfied that Miss Marriott no longer poses a risk to patient safety. It considered there to be a real risk of repetition of the events and a risk of significant harm to patients in her care, should she be permitted to return to unrestricted nursing practice. Therefore, the panel decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objective of the NMC: to protect, promote and maintain the health, safety and well-being of the public and patients and the wider public interest which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. As Miss Marriott has not yet addressed the concerns identified by the last reviewing panel, the panel determined that, in these circumstances, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed member of the public, who aware of all the evidence presented in this case, would be seriously concerned by the actions of Miss Marriott, and would expect a panel to make a finding that her fitness to practise remains impaired, in absence of any new evidence to the contrary.

For these reasons, the panel finds that Miss Marriott's fitness to practise remains impaired on the grounds of public protection and it is also in the public interest.

Decision and reasons on sanction

Having found Miss Marriott'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 risk of repetition identified and the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case as this would not place any restrictions on Miss Marriott's nursing practice. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. The panel noted that whilst the concerns relate to Miss Marriott's conduct and behaviour in the performance of her role as a registered nurse, there are clear identifiable areas of retraining relating which needed to be addressed. Miss Marriott had been subject to two conditions of practice orders, spanning over a two and a half year period, where she had the opportunity to address the concerns identified, but had failed to do so. Miss Marriott is also currently subject to a suspension order for six months, but does not appear to have utilised this time to try to evidence any remediation. Furthermore, Miss Marriott does not appear willing to engage with a conditions of practice order at this stage of the process, as she is now asking to be removed from the NMC register.

Whilst the panel considered these concerns to be capable of remediation in principle, the panel determined that it would not be possible to formulate any other workable conditions to permit Miss Marriott to return to nursing practice. The panel had concerns regarding her lack of insight, remediation, and the length of time it has taken for her to reach this stage, with her insight now deteriorating.

In light of the above, the panel was satisfied that a conditions of practice order would not adequately address the public protection concerns and the wider public interest elements of this case.

The panel next considered imposing a further suspension order. The panel noted from its decision on impairment that Miss Marriott has not attempted to remediate the concerns identified, nor has she developed her insight significantly since the last review of this hearing. It considered Miss Marriott to have not made any substantial progress in developing her insight since the substantive hearing in 2017. The panel was of the view that whilst Miss Marriott's failings may have been remediable at the time of the previous hearings, given her lack of recognition and appreciation as to the extent of her failings, and the time that has now elapsed since she last practised, she appears unwilling to remediate her nursing practice. She has not taken the opportunity to provide suitable and applicable information which may have been of assistance to this panel, and is now attempting to disengage. In taking account of the evidence provided, the panel was of the view that it would not be in the public interest to continue with these matters indefinitely, and that this process should be brought to a conclusion. Therefore, in having regard to the above, whilst a further suspension order would satisfy the public protection concerns identified, the panel was not satisfied that it would sufficiently address the wider public interest elements of this case.

In the circumstances, the panel determined that a further period of suspension would not serve any useful purpose. Miss Marriott has been afforded many opportunities by previous panels to develop her insight and she has failed to do so. This inability to recognise her failings and self-direct her own learning to address them demonstrates a lack of understanding and appreciation of the need for reflective practice that is key to safe and effective nursing practice. This is not compatible with the behaviours expected of a registered nurse. The panel determined that it was necessary to take action to prevent Miss Marriott from practising as a registered nurse in the future and concluded that the only sanction that would adequately protect the public and serve the wider public interest was a striking-off order.

This decision will be confirmed to Miss Marriott in writing.

That concludes this determination.