

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

**Substantive Order Review Meeting
27 April 2022**

Virtual Meeting

Name of registrant:	Matthew Alexander Shaw-Smith
NMC PIN:	0810567E
Part(s) of the register:	Registered Nurse Mental Health Nursing 6 October 2008
Area of registered address:	Lancashire
Type of case:	Misconduct
Panel members:	Derek McFaul (Chair, Lay member) Patience McNay (Registrant member) Rachel Forster (Lay member)
Legal Assessor:	Robin Ince
Hearings Coordinator:	Sophie Cubillo-Barsi
Order being reviewed:	Suspension order – 6 months
Fitness to practise:	Impaired
Outcome:	Striking off order to come into effect immediately in accordance with Article 30(2)

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Mr Shaw-Smith was not in attendance and that the Notice of Meeting had been sent to Mr Shaw-Smith's registered email address on 17 March 2022.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed after a specific date namely 18 April 2022 by way of a meeting. The Notice advised Mr Shaw-Smith that if he objected to the matter proceeding by way of a meeting then he was to notify the NMC within 29 days of the date of the Notice. The panel noted that no such request had been made by Mr Shaw-Smith.

In the light of all of the information available, the panel was satisfied that Mr Shaw-Smith 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 review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect immediately in accordance with Article 30(2) 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 5 May 2021. A review hearing of the order was listed on 26 October 2021 however that hearing was adjourned. The order was then reviewed on 1 December 2021 and extended for a further six months.

The current order is due to expire at the end of 4 June 2022.

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

The charges found proved by way of the Consensual Panel Determination (CPD) of the substantive order were as follows:

'That you, whilst employed as a registered nurse as a Band 7 Team Leader, at Cromwell House, Manchester;

1. *On or around 08 November 2016 , within the document known as the "3 day review" following the death of Service User 1, made the following incorrect statement/s;*
 - a) *That Service User 1 had been offered an 'emergency/same day appointment' at Cromwell House when in fact he had been offered a 'urgent/5 day appointment' and/or*
 - b) *That Service User 1 had declined the emergency/same day appointment at Cromwell House.*
2. *Your conduct at Charge 1 above was dishonest because it was intended to create a more favourable impression of the role of your Team in the circumstances of Service User 1's death.*
3. *On 31 January 2017 during an internal investigation interview in to the "3 day review" you submitted following the death of Service User 1, you made the following incorrect statement;*
 - a) *That Colleague A told you she had offered Service User 1 an 'emergency/same day appointment', when she had not told you this.*
4. *Your conduct at Charge 3 above was dishonest as it was intended to try to cover up that you submitted a misleading "3 day review" in respect of the death of Service User 1.*

5. *Following the issue of a management direction on 29 November 2016, to ensure that your Team immediately ceased the use of 'opt in' communications for service users;*
 - a) *you failed to adequately implement this direction in a timely manner and/or*
 - b) *on 02 December 2016, personally contravened the direction by sending an 'opt in' communication to a service user.*
6. *On 31 January 2017 during an internal investigation interview in to the use of 'opt in' communications, you made the following incorrect statement;*
 - a) *That you had verbally told your Team to cease using 'opt in' communications for services users, when you had not.*
7. *Your actions in Charge 6 above were dishonest because you made the statement in order to cover up the extent of your failure to act on the management direction.*

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

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

"The panel noted that the original panel found that Mr Shaw-Smith had significantly developing insight. At this hearing the panel noted that Mr Shaw-Smith has since become disengaged with the NMC and the proceedings and had regard of his email which stated 'please stop emailing me further emails will be classed as harassment'. The panel noted that since October 2021, there has been no further communication or engagement from Mr Shaw-Smith in respect of today's hearing.

In its consideration of whether Mr Shaw-Smith has remedied his practice, the panel took into account that he has not provided any information to demonstrate practical remediation or any of the recommendations by the original panel. The panel had

regard of the letter from Mr Shaw-Smith dated 15 October 2021 where he accepts some concerns however it was of the view that the letter did not speak to address the heart of the issues.

The panel considered the seriousness of the charges found proved and the risk of harm to the public if Mr Shaw-Smith were to return to nursing unrestricted and it is of the view that the charges concerned fundamentals of nursing practice, in particular a breach of the Duty of Candour. The panel is of the view that there is a risk of repetition of the misconduct and therefore a risk to the public remains. In the circumstances, the panel concluded that Mr Shaw-Smith's fitness to practise remains impaired on public protection grounds. The panel took into account the gravity of the misconduct and 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 Shaw-Smith's fitness to practise remains impaired on both public protection and public interest grounds"

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

"The panel first considered whether to take no action but concluded that this would be inappropriate in view of the circumstances of the case. Mr Shaw-Smith's previous representative had submitted, for the substantive order review hearing on 26 October 2021 that the appropriate course of action would be to make a finding of impairment and allow the order to expire, to enable Mr Shaw-Smith's registration to lapse. Today's panel has not had any further submissions from Mr Shaw-Smith or his representative as to his intention to stop practising as a nurse and remove himself from the register. In addition, the panel has been informed of a new referral to the NMC made on 4 May 2021. In accordance with rule 14(4)(a) of the NMC (Education, Registration and Registration Appeals) Rules 2004', the panel was satisfied that allowing the order to expire, would not result in Mr Shaw-Smith's registration lapsing. In all the circumstances, the panel has determined that it would

not protect the public and 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 Mr Shaw-Smith's practise 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 Mr Shaw-Smith'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. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mr Shaw-Smith'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. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Shaw-Smith's misconduct and bearing in mind that he has disengaged from the NMC, there is no evidence to suggest Mr Shaw-Smith would comply with the conditions. The panel is also of the view that the charges concern fundamental aspects of nursing, specifically in respect of the dishonesty charges, and therefore concluded that conditions could not be devised that would appropriately address this.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mr Shaw-Smith further time to fully reflect on his previous dishonesty and the impact of this on the wider public interest. It considered that Mr Shaw-Smith 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 concluded that a further six month suspension order would be the appropriate and

proportionate response and would afford Mr Shaw-Smith adequate time to further develop his insight and remediation. It would also give Mr Shaw-Smith an opportunity to complete any training and development (in relation to record keeping and management) and provide any testimonials as to his character in his workplace since the substantive hearing.

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. Accordingly, the panel determined to impose a suspension order for the period of 6 months would provide Mr Shaw-Smith with a sufficient opportunity to engage with the NMC and to provide evidence of practical remediation, training and development and further insight into his misconduct. It considered this to be the most appropriate and proportionate sanction available.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 4 December 2021 in accordance with Article 30(1). The order will be reviewed before the end of its expiry.

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.

The panel considered a striking off order and determined that it would be disproportionate at this stage. However, a failure by Mr Shaw-Smith to re-engage with these proceedings and provide a future panel with evidence of his remediation and insight would leave it open for a future panel to consider this sanction.

Any future panel reviewing this case would be assisted by:

- Mr Shaw-Smith's engagement with the NMC and attendance at future hearings*
- Evidence of testimonials from employers or workplace colleagues in any paid or unpaid post.*

- *A reflective piece setting out how Mr Shaw-Smith's level of insight has developed, particularly into his misconduct and how this has impacted on the wider public interest.*
- *Evidence of training and development Mr Shaw-Smith has undertaken in relation to record keeping and management.*
- *Evidence of steps Mr Shaw-Smith has taken to keep up to date with nursing practice."*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Shaw-Smith'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 substantive bundle.

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 Mr Shaw-Smith's fitness to practise remains impaired.

The panel noted that at the last reviewing hearing, Mr Shaw-Smith had completely disengaged with the NMC .No further communication has been received from Mr Shaw-Smith since November 2021.

The panel does not have anything before it to suggest that Mr Shaw-Smith has remedied his practice. To the contrary, Mr Shaw-Smith has failed to comply with any of the recommendations made by the last reviewing panel.

The panel considered the seriousness of the charges found proved and the risk of harm to the public if Mr Shaw-Smith were to return to nursing unrestricted. The panel is of the view that there is a risk of repetition of the misconduct and therefore a risk to the public remains. In the circumstances, the panel concluded that Mr Shaw-Smith's fitness to practise remains impaired on public protection grounds.

The panel took into account the gravity of the misconduct and 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 Shaw-Smith's fitness to practise remains impaired on both public protection and public interest grounds.

Decision and reasons on sanction

Having found Mr Shaw-Smith'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 Mr Shaw-Smith'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 Mr Shaw-Smith'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. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether a conditions of practice on Mr Shaw-Smith's registration would be a sufficient and appropriate response. However, given Mr Shaw-Smith's lack of engagement with these proceedings, the panel concluded that a conditions of practice order would not adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that Mr Shaw-Smith has been the subject of two periods of six month suspension orders but he has failed to demonstrate any further insight into his previous failings. The panel was of the view that considerable evidence would be required to show that Mr Shaw-Smith no longer posed a risk to the public. The panel determined that due to Mr Shaw-Smith's disengagement with these proceedings a further period of suspension would not serve any useful purpose. The panel was also mindful of its responsibilities of the expeditious disposal of this case. The panel therefore determined that it was necessary to take action to prevent Mr Shaw-Smith 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 striking-off order will replace the current suspension order with immediate effect in accordance with Article 30(2).

This decision will be confirmed to Mr Shaw-Smith in writing.

That concludes this determination.