

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

**Substantive Order Review Meeting  
Tuesday, 7 June 2022**

Virtual Meeting

**Name of registrant:** Helen Potts

**NMC PIN:** 12D0863E

**Part(s) of the register:** Registered Nurse  
Adult Nursing – May 2012

**Relevant Location:** Tameside

**Type of case:** Misconduct

**Panel members:** Suzy Ashworth (Chair, Lay member)  
Margaret Marshall (Registrant member)  
Rachel Childs (Lay member)

**Legal Assessor:** Nigel Ingram

**Hearings Coordinator:** Philip Austin

**Order being reviewed:** Suspension order (6 months)

**Fitness to Practise:** Currently impaired

**Outcome:** Striking-off order to come into effect at the end of 23 July 2022, in accordance with Article 30(1)

## **Decision and reasons on service of Notice of Meeting**

The panel received information from the legal assessor concerning service of the notice of meeting.

The notice of meeting was sent by the Nursing and Midwifery Council's ("NMC") case officer in a secure and encrypted fashion to the email address that Mrs Potts had previously used for correspondence with the NMC on 5 May 2022. The panel noted that the statutory instrument in place allows for electronic service of the notice of meeting to be deemed reasonable in the circumstances involving COVID-19.

The notice of meeting informed Mrs Potts that a meeting would go ahead on or after 6 June 2022, and this date was also the deadline for her to provide any written evidence to the panel. Furthermore, the notice of meeting informed Mrs Potts that she could ask for this matter to be dealt with at a hearing instead of a meeting, and that she had 29 days from the date of the notice to make this request.

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

The panel noted that the notice of meeting had been served on 5 May 2022, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) ("the Rules").

The panel was content for this review to be undertaken at a meeting, and it did not consider it necessary to refer this matter to a hearing. The panel noted that Mrs Potts has not responded to the notice of this meeting. Furthermore, Mrs Potts did not attend her substantive hearing in June 2021, nor did she attend the first review hearing in December 2021. She had initially said that she would send in a reflective piece for that panel to consider, but that does not appear to have been forthcoming.

Therefore, the panel determined that adjourning this matter for consideration at a hearing would not serve any useful purpose at this time. Mrs Potts has not had any engagement

with the NMC since the substantive hearing, and she has not provided any new material that she wants the panel to take account of in making its determination today.

The panel was satisfied that it would be able to consider this matter at a meeting today, having regard to all the documentary evidence before it.

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

The panel decided to impose a striking-off order. This order will come into effect upon expiry of the current suspension order, namely, at the end of 23 July 2022, 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 panel of the Fitness to Practise Committee ("FtPC") panel on 25 June 2021. At the first review hearing on 14 December 2021, a panel of the FtPC decided to impose a further suspension order for a period of six months.

The current order is due to expire at the end of 23 July 2022.

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. In relation to one or more of the dates set out in Schedule A:*

*a) Worked extra hours without seeking prior authorisation from a senior member of staff.*

*b) Claimed for extra hours worked via NHSP without authorisation.*

c) *Self-authorized the hours worked on NHSP.*

**Schedule A**

- i. 27 May 2018
- ii. 10 June 2018
- iii. 17 June 2018
- iv. 22 June 2018
- v. 27 June 2018
- vi. 28 June 2018
- vii. 5 August 2018
- viii. 26 August 2018
- ix. 2 September 2018
- x. 28 October 2018

2. ...

3. *Your actions in 1b were dishonest in that you knew you could not claim the hours back from NHSP without authorisation.*

4. *Your actions in Charge 1c were dishonest in that you knew you could not self-authorise hours worked on NHSP.*

*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 considered whether Mrs Potts’ fitness to practise remains impaired.*

*The panel took into account all of the information provided to it. It considered that despite the previous panel stating that a future panel would benefit from Mrs Potts' attendance, a reflective piece and references/testimonials, the panel has not received any significant information from Mrs Potts in advance of the hearing today. It also noted that Mrs Potts has not attended the hearing today and that there is no further information on her employment status, as she has not worked as a registered nurse since 2018.*

*The panel was of the view that there has been no change in circumstances and that there is nothing that undermines the necessity of an order. It considered that it has no information before it to demonstrate that the risk of repetition has reduced. It noted Mrs Potts' email, dated 23 November 2021, in which she stated that she would submit a reflective piece in advance of the hearing today, although this had not been provided. Further, it was of the view that the public would expect a registrant to engage fully with its regulator and with all proceedings.*

*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 only is required, as stated at the substantive hearing.*

*For these reasons, the panel finds that Mrs Potts' fitness to practise remains impaired."*

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 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, an order that does not restrict Mrs Potts' 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 Mrs Potts’ 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 Mrs Potts’ 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 substantive hearing and concluded that a conditions of practice order would not adequately satisfy the public interest. The panel was not able to formulate conditions of practice that would adequately address the concerns relating to Mrs Potts’ misconduct, and that it would serve no purpose as there are no clinical issues present.*

*The panel considered the imposition of a further period of suspension. It was of the view that a suspension order would allow Mrs Potts further time to fully reflect on her previous misconduct and dishonesty. It considered that Mrs Potts’ needs to gain a greater 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 sanction and would afford Mrs Potts adequate time to develop her insight and remediation. It would also give Mrs Potts an opportunity to obtain testimonials from any settings whether healthcare or other, to attest to her honesty and integrity in her workplace assignments since the substantive hearing.*

*The panel considered a strike-off order but decided that this would be disproportionate at this time. It considered that a further period of suspension would give Mrs Potts an opportunity to engage with the NMC and take steps to remediate the concerns. It balanced the fact that Mrs*

*Potts is unrepresented, with consideration of what the original panel had suggested would be of assistance to a reviewing panel. As there has been no new information provided by Mrs Potts in advance of today's hearing, this panel would remind Mrs Potts of her responsibility to engage fully with the NMC and these proceedings and the requirement of her to demonstrate remediation. It considered that the next review hearing would be taking place a year after the original suspension order was imposed, and that a future panel would have all sanctions open to it, including strike-off, if there is no further engagement.*

*The panel determined therefore that a suspension order is the appropriate sanction which would continue satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 6 months which would provide Mrs Potts with an opportunity to engage with the NMC and take steps to remediate the concerns. 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 23 January 2022 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:*

- *Mrs Potts' attendance at the review*
- *Mrs Potts' engagement with the NMC*
- *Evidence of a reflective piece which demonstrates Mrs Potts' learning from the incidents including her understanding of the impact of her conduct on her employer, her colleagues and the reputation of her profession*
- *References and testimonials"*

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

The panel has considered carefully whether Mrs Potts' 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 contained within the NMC meeting bundle. It 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 had regard to the previous determinations in this case, and noted that Mrs Potts' fitness to practise as a registered nurse was found impaired on the grounds of the public interest alone. There were no public protection concerns in the original or the first reviewing panel's decisions.

The panel considered the misconduct identified to be serious, and to relate to Mrs Potts' behaviour in the role of a registered nurse. It noted that the concerns predominantly relate to dishonesty, which can, in principle, be more difficult to remediate than clinical concerns.

The panel noted that no new information had been received by the NMC in relation to this matter, as Mrs Potts does not appear to have engaged with the NMC since November 2021, prior to her first substantive order review hearing on 14 December 2021. In November 2021, Mrs Potts' engagement was limited and consisted of a short email exchange in which she indicated that she might prepare a reflective piece for the panel's consideration; this was not forthcoming. Therefore, the panel could not be satisfied that Mrs Potts had made any progress in developing her insight, or in remediating the misconduct found proved. The panel was of the view that the misconduct found proved,

coupled with the extended lack of engagement with the NMC, could be demonstrative of an underlying attitudinal issue and an inability or unwillingness to remediate.

Mrs Potts has not provided the panel with any evidence of the steps she has taken to address the concerns identified. She has not complied with any of the recommendations stipulated by the first reviewing panel, as she has not engaged with the NMC or provided a reflective piece. Mrs Potts could have appeared at a hearing and she has not provided any references or testimonials.

In the absence of any evidence to the contrary, the panel could not be satisfied that the risk of repetition in this case had reduced. It considered there to be a real risk of repetition of the events, should Mrs Potts be permitted to return to unrestricted nursing practice.

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 Mrs Potts has not yet addressed the serious concerns identified by the original and first reviewing panels, this panel determined that, in the particular circumstances of this case, a finding of continuing impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of all the evidence presented in this case, would be extremely concerned by the actions of Mrs Potts, 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 Mrs Potts' fitness to practise remains impaired on the grounds of public interest alone.

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

Having found Mrs Potts' 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 Mrs Potts’ 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 as the concerns relate to Mrs Potts’ conduct and behaviour, there were not any clear identifiable areas of retraining which could be addressed through the imposition of a conditions of practice order. Mrs Potts’ nursing registration has been subject to suspension for a period of approximately 12 months, and she does not appear to have utilised this time to try to evidence any remediation or develop insight. This is particularly evident in the last seven months, in which she has made no contact with the NMC. The panel determined that it would not be possible to formulate any workable conditions to permit Mrs Potts to return to nursing practice.

In light of the above, the panel determined that a conditions of practice order would be neither proportionate, nor would it satisfy the public interest considerations.

The panel next considered imposing a further suspension order. The panel noted from its decision on impairment that Mrs Potts has not attempted to remediate the concerns identified, nor has she provided any evidence as to how she has developed her insight since the substantive hearing. The panel was of the view that whilst Mrs Potts’ failings may have been capable of remediation, given her lack of engagement, recognition and appreciation as to the extent of her failings, this was no longer achievable. Mrs Potts has not taken the opportunity since the first review hearing to provide suitable and applicable

evidence which may have been of assistance to this panel, and it appears that she has disengaged from the regulatory process.

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. It noted that it had been indicated to Mrs Potts, both by the previous FtPC panel and the NMC in its notice of meeting letter dated 5 May 2022, that a striking-off order would be available to this panel at today's meeting. Despite this, Mrs Potts has chosen not to engage with the NMC.

In having regard to all the above, the panel was not satisfied that a further suspension order would sufficiently address the wider public interest elements of this case as it would not serve any useful purpose. Mrs Potts had been afforded an opportunity by the original panel to develop and demonstrate her insight and to strengthen her practice, and she failed to do so. Mrs Potts had then been afforded another opportunity by the first reviewing panel, and she has also failed to take advantage of this.

The panel considered that Mrs Potts' inability to recognise and address her failings demonstrates a lack of understanding and appreciation of the need for reflection, which 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 Mrs Potts from practising as a registered nurse in the future and concluded that the only sanction that would serve the wider public interest was a striking-off order.

This decision will be confirmed to Mrs Potts in writing.

That concludes this determination.