

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

**Substantive Order Review Meeting
Friday 11 March 2022**

Virtual Meeting

Name of registrant: Claire Rachel Howard

NMC PIN: 12A0605E

Part(s) of the register: Registered Midwife – Midwifery (April 2012)

Area of registered address: Kent

Type of case: Misconduct/ Lack of competence

Panel members: Deborah Hall (Chair, Registrant member)
Donna Green (Registrant member)
Alex Forsyth (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Safa Musad

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking off order to come into effect at the end of 19 April 2022 in accordance with Article 30 (1)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Mrs Howard's registered email address on 3 February 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, the time by which to apply for a hearing and/or submit documents. She was warned that the review would be heard on or after 7 March 2022.

In the light of all of the information available, the panel was satisfied that Mrs Howard 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 at the end of 19 April 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 12 months by a Fitness to Practise Committee ('FtPC') panel on 18 September 2020. This was first reviewed on 14 September 2021 and a panel of the FtPC imposed a suspension order for a period of 6 months. The current order is due to expire at the end of 19 April 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 Band 6 midwife:

1) *On or around 2 May 2018 made inaccurate entries on Patient A's notes including:*

- a. *blood pressure **[Found proved]***
- b. *Temperature **[Found proved]***
- c. *respiration rates **[Found proved]***

2) *Your actions at charge 1 above were dishonest because you knew that your records did not accurately reflect clinical observations of Patient A*
[Found proved]

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

That you a registered midwife, failed to demonstrate the standards of knowledge, skill and experience required to practise safely as Band 6 midwife between 7th August 2018 and 31st January 2019, in that you:

3) ...

4) *On the 25th September 2018 failed to independently suggest the most appropriate course of action for third stage of labour.*

[Found proved]

5) ...

6) ...

7) *On the 22nd November 2018 prepared incorrect medication.*

[Found proved]

8) *On the 22nd November 2018 required prompting to administer medication.*

[Found proved]

9) *On the 22nd November 2018 completed an e-learning package in a patient's room.*

[Found proved]

10)...

11) *On the 6th December 2018 failed to devise appropriate care plan for a patient.*

[Found proved]

12)...

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

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

'The panel considered whether Mrs Howard's fitness to practise remains impaired.

The panel noted that there has been no new material change since the substantive hearing. The panel had regard to the single email correspondence between Mrs Howard and her case officer at the NMC dated 9 March 2021, which she stated that she intends to maintain her registration and that she would like to know the next steps in doing so. However, since then Mrs Howard has not engaged with the NMC, following the case officer's response. The panel was of the view that there is an increased risk of repetition as Mrs Howard was subject to allegations regarding dishonesty in which she did not demonstrate any evidence of remediation and insight. The panel further noted that Mrs Howard has not provided evidence of her current circumstances and that she has not acted upon the recommendations that were suggested by the previous panel.

In light of there being no new information before the panel, it was of the view that the ongoing risk to the public has not reduced since the last hearing. It concluded that Mrs Howard's fitness to practise remains impaired by way of misconduct and her lack of competence. In coming to this decision, the panel determined that a finding of current 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 Mrs Howard's fitness to practise remains impaired.'

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

'Having found Mrs Howard'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 as the public would not be protected. The panel considered the NMC's guidance on allowing an order to lapse but decided that the tests have not been met as Mrs Howard had indicated that she wished to maintain her registration.

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 Mrs Howard's practice would not be appropriate in the circumstances.

The panel next considered whether conditions of practice on Mrs Howard 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 meeting 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 Mrs Howard's misconduct.

The panel considered the imposition of a further period of suspension. It was of the view that a suspension order may allow Mrs Howard further time to develop her insight into her clinical failings and dishonesty. It considered that Mrs Howard needs to gain a full understanding of how the dishonesty of one midwife can impact upon the midwifery profession as a whole and not just the organisation that the individual midwife is working for. The panel concluded that a further 6 months suspension order would be appropriate and proportionate. This would afford Mrs Howard adequate time to demonstrate the development of her insight and remediation, and to engage with her regulator.

The panel considered carefully whether a strike off was the appropriate sanction. In what was a very finely balanced decision, where strike off was seriously considered, the panel recognised that Mrs Howard has been practising as a Registered Midwife for eight years and concluded that due to her stating that she would like to remain on the Register and have a final chance to comply was a proportionate response. Whilst not attempting to direct any future panel, this panel makes clear that the option of strike off is an available outcome if non-compliance continues.

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.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 19 October 2021, 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 Howard's engagement with the NMC;*
- *Her attendance at the hearing;*
- *A reflective piece demonstrating Mrs Howard's insight and remediation into her:*
 - a) *Dishonesty*
 - b) *clinical failings*
- *Information regarding how Mrs Howard has kept her midwifery skills and knowledge up-to-date;*
- *Testimonials which deal with Mrs Howard's character in either a work or nonworkplace setting.'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Howard'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 bundle.

The panel heard and accepted the advice of the legal assessor. The panel could only impose a striking off order in relation to the misconduct charges found proved.

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 Mrs Howard's fitness to practise remains impaired.

The panel noted that there was no new information before it to suggest that there has been a change in the circumstances of the case. It noted that Mrs Howard has not engaged with the NMC and there is nothing before the panel to suggest that she has complied with any of the recommendations made by the previous panel. The panel was of the view that Mrs Howard has not provided any reflective piece or testimonials in relation to the dishonesty and has not demonstrated insight.

In its consideration of whether Mrs Howard has taken steps to strengthen her practice, the panel had no information before it to suggest that Mrs Howard has been working or that she wishes to return to midwifery practice. The panel noted that Mrs Howard has not practised as a registered midwife for over three years. There has been no evidence provided by Mrs Howard of how she has sought to improve her knowledge and skills. In light of this, the panel determined that there remains a risk of repetition as Mrs Howard is still 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 Mrs Howard's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mrs Howard'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. However, it concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified, it noted that an order that does not restrict Mrs Howard's practice would not be appropriate in the circumstances. The panel had regard to the SG which 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 Howard's misconduct was not at the lower end of the spectrum and that taking no action or imposing 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 take no action or to impose a caution order.

The panel next considered whether a conditions of practice order would be sufficient and appropriate. 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 Mrs Howard's misconduct. The panel was of the view that due to the lack of engagement, there was no information before it to assess what type of conditions would be appropriate. Further, the panel determined that a conditions of practice order would be inappropriate in light of the dishonesty.

The panel has not received any information to suggest that Mrs Howard has been working or that she intends to return to practise as a midwife. In view of this, the panel considered

that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Mrs Howard has not shown any insight or remorse for her misconduct or dishonesty within her clinical practice that put patients at risk of harm. Although her dishonesty was not at the highest end of the scale, she produced no evidence to suggest remediation or remorse. The panel was of the view that considerable evidence would be required to show that Mrs Howard no longer posed a risk to the public. The panel noted that Mrs Howard has already had two period of suspension and it determined that a further period of suspension would not serve any useful purpose in all of the circumstances given her lack of engagement. The panel had no information before it to suggest that Mrs Howard wishes to return to unrestricted practice or that she would now engage with the NMC. The panel therefore determined that it was necessary to take action to prevent Mrs Howard 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 take effect upon the expiry of the current suspension order, namely the end of 19 April 2022 in accordance with Article 30(1).

This decision will be confirmed to Mrs Howard in writing.

That concludes this determination.