

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

**Substantive Order Review Hearing
Friday 4 March 2022**

Virtual Hearing

Name of registrant: **Michelle Louise Mottershaw**

NMC PIN: 88A1284E

Part(s) of the register: Registered Nurse – Adult Nursing (March 1991)
Registered Nurse – Children’s Nursing
(September 1993)

Area of registered address: Leicestershire

Type of case: Misconduct

Panel members: Bryan Hume (Chair, lay member)
Richard Curtin (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Patricia Crossin

Hearings Coordinator: Alice Byron

Nursing and Midwifery Council: Represented by Richard Webb, Case Presenter

Mrs Mottershaw: Not present and unrepresented

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with
Article 30 (1), namely 12 April 2022**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Mottershaw was not in attendance and that the Notice of Hearing had been sent to Mrs Mottershaw's registered email address on 27 January 2022.

Mr Webb, on behalf of the Nursing and Midwifery Council (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.

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 Mrs Mottershaw's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Mottershaw has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Mottershaw

The panel next considered whether it should proceed in the absence of Mrs Mottershaw. The panel had regard to Rule 21 and heard the submissions of Mr Webb who invited the panel to continue in the absence of Mrs Mottershaw. He submitted that Mrs Mottershaw had voluntarily absented herself.

Mr Webb referred the panel to the email from Mrs Mottershaw to her NMC case officer, dated 26 January, in which she stated:

'My decision will have to be I won't be attending the review and won't be pursuing getting back into nursing.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Mrs Mottershaw. In reaching this decision, the panel has considered the submissions of Mr Webb and the advice of the legal assessor. It has had particular regard to any relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Mottershaw;
- Mrs Mottershaw has informed the NMC that she will not be attending the review hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Mottershaw.

Decision and reasons on review of the substantive order

The panel decided to allow the current order to lapse.

This order will come into effect at the end of 12 April 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 11 March 2021.

The current order is due to expire at the end of 12 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 nurse

1. On the night shift of the 7/8 November 2015 with reference to Patient A's notes timed at 22.15

1.1 Recorded that Patient A was both awake and asleep which was contradictory

1.2 Recorded two observations at the same time without being clear as to which observation was the correct one

[...]

1.4 Did not record an overall Paediatric Observation Priority Score

1.5 On recording a temperature of 38 degrees Celsius did not escalate and/or take further temperature readings

2. On the night shift of the 7/8 November 2015 with reference to Patient A's notes at 22.45

2.1 Recorded a range of 88% to 97% in relation to oxygen saturations levels when there should be a single reading

[...]

2.3 Did not record Patient A's temperature

2.4 Did not include in the Paediatric Observation Priority Score Patient A's oxygen saturations

3. In respect of Patient A's vital signs did not monitor the following:

[...]

3.2 Respiratory rate

[...]

5. On 7 November 2015 at 23.35 with reference to administering oxygen to patient A

[...]

5.2 administered oxygen using a paediatric nasal cannulae instead of a face mask

5.3 Did not escalate Patient A's condition so that a medical review could be carried out

6. On 8 November 2015 at 2.50 on recording that patient A had had two episodes of diarrhoea did not take/ and or record patient A's blood pressure

7. On 7 November 2015 when administering an infusion containing saline and dextrose to patient A did not carry out the following actions:

7.1 Did not ensure that the infusion had been checked by second member of staff.

7.2 Did not ensure that the prescription for IV saline and dextrose was complete prior to administering it to patient A.

[...]

10. On the 26 November 2015 in relation to Patient B

10.1 Did not realise the significance of not being able to obtain oxygen saturation levels;

[...]

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

The original panel determined the following with regard to impairment:

'In light of the misconduct found, the panel concluded that Mrs Mottershaw has in the past acted in a manner likely to put patients and the public at unwarranted risk of harm. She failed to conduct regular observations, keep accurate records, escalate appropriately and to adhere to the Trust Safe IV Medication Administration Policy and, as a consequence, placed a patient at risk of harm.'

The panel determined that Mrs Mottershaw's failings related to basic and fundamental tenets of nursing practice and her conduct was liable to bring the profession into disrepute.

The panel then considered whether there is a continuing risk to patient safety and the risk of repetition. In doing so, the panel had regard to the issues of insight, remorse and remediation. For the reasons set out below the panel has concluded that Mrs Mottershaw is liable in the future to put patients at unwarranted risk of harm.

In relation to insight, the panel had regard to Mrs Mottershaw's reflective statement, and the evidence she gave during the Trust and Coronial investigations. The panel noted that there is some evidence of partial insight as she recognised her documentation was inadequate and she should have had more confidence to escalate. She had accepted responsibility for some of the matters, acknowledged them and demonstrated insight into what she should do differently. For example, in her statement for the Coroner's inquest she said:

'When the department is so busy and you are aware there are no other nurses available to take over care you carry on doing what you can when you can. However, I have learnt that spreading myself too thin and not allowing enough time to fully document on all the paperwork can compromise care.'

However, in respect of other failings she had maintained that her actions were appropriate and she had referred to having been made a 'scapegoat'. Although there was evidence of some insight, she had not yet demonstrated insight into the potential consequences of her actions and had yet to demonstrate full insight into her misconduct. The panel noted that in her reflective statement Mrs Mottershaw has demonstrated remorse for her actions and omissions.

The panel considered that as the misconduct identified relates to Mrs Mottershaw's clinical practice, the misconduct is remediable.

While the panel is of the view that the misconduct found is remediable, the starting point for any such remediation has to be an acknowledgement of, reflection upon, and insight into the deficiencies in question. The panel was mindful that Mrs Mottershaw has limited insight into her misconduct and she has not provided any evidence of further training. The panel noted that Mrs Mottershaw has informed the NMC that she has not worked as a registered nurse since the charges arose. She has therefore not had the opportunity to remedy her failings in a clinical context.

The panel noted that Mrs Mottershaw has indicated that she does not wish to return to practice as a registered nurse at this time. As Mrs Mottershaw has not demonstrated that she has remediated her misconduct, the panel was of the view that the public would remain at risk of harm if she were able to practise without restriction. The panel finds that Mrs Mottershaw's fitness to practise is impaired on the grounds of public protection.

Having found that Mrs Mottershaw's fitness to practise is currently impaired on public protection grounds, the panel went on to consider whether a finding of impairment was also required on wider public interest grounds. It had regard to the guidance in the case of Grant that there may be cases in which the particular circumstances or features of the case are such that public confidence in the profession and the regulatory process would be undermined if a finding of impairment were not made on public interest grounds.

The panel did not consider that this was such a case. The panel carefully considered the nature and scope of the findings of misconduct in this case and the context in which they occurred. Essentially, this was a series of errors involving poor nursing practice in relation to a single patient during a single shift. However, this was one night in a busy Emergency Department. Mrs Mottershaw was the sole paediatric nurse on the ward at the time, and other children present were requiring her attention. Mrs Mottershaw, along with

other healthcare professionals, had not recognised how unwell Patient A was, but it was not alleged that she had caused or contributed to his death or to the loss of a material chance to intervene. Although there was public interest in the case, that was primarily because of the child's death. The local and coronial investigations had identified a series of failings and issues of which Mrs Mottershaw was only a small part and it would not be fair to attribute any heightened public interest in the case to her role in events. Whilst the public would rightly expect nurses to take accurate and complete observations in an emergency department setting, this was a single patient on a single occasion. The panel did not consider that the nature, scope and context of the failings in this case were such that a finding of impairment was required in order to satisfy wider public interest considerations. The finding of impairment on public protection grounds was sufficient, on the particular facts of this case, to maintain proper professional standards.

The panel therefore determined that Mrs Mottershaw's fitness to practise is currently impaired by reason of her misconduct on the ground of public protection alone.'

The original 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 public protection concerns identified. Taking no further action would not protect the public or assist Mrs Mottershaw in addressing the shortfalls in her practice. For the same reasons, the panel considered that a caution order would not be appropriate or sufficient to protect the public.

The panel next considered whether placing conditions of practice on Mrs Mottershaw'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 took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that there are no deep-seated attitudinal concerns identified in Mrs Mottershaw's case. The misconduct involved clinical failings representing poor clinical practice during an isolated incident on a single shift and in relation to a single patient.

Whilst the panel noted that Mrs Mottershaw indicated that she did not currently wish to return to practice as a registered nurse, the panel considered that it was open for her to change her mind at any time, particularly [PRIVATE] as this may be a factor in her current reluctance to resume her nursing practice. Mrs Mottershaw is a dual-qualified nurse who has had a previously unblemished career. It was of the view that there is a public interest in returning an experienced and otherwise competent nurse to the profession with appropriate safeguards.

[PRIVATE]

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case

and which would be effective to protect the public while Mrs Mottershaw remedies her practice.

There was some evidence that Mrs Mottershaw would be capable of engaging in conditions [PRIVATE]. The panel noted that there had been encouraging early signs when Mrs Mottershaw engaged with the Trust and put together a comprehensive reflective action plan. There was also evidence of insight, albeit that this requires further development.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mrs Mottershaw's case. The misconduct occurred in an isolated incident on a single shift and in relation to a single patient. The case involved clinical failings, primarily relating to the making and accurate recording of regular observations. As such, it was readily capable of being remedied. [PRIVATE]. The panel noted that, although the case had a very serious outcome, seriousness of actions should not be confused with seriousness of consequences. It was mindful that there was no suggestion that Mrs Mottershaw had caused or contributed to the death of Patient A. The panel considered the NMC's sanction bid of a 6 month suspension order with a review and determined that to impose such a sanction would be unduly punitive in the circumstances.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will protect the public. The panel was mindful that because Mrs Mottershaw has been away from practice for some years, she would now need to take appropriate steps to revalidate her NMC registration before she could work under these conditions. It also appears that she may feel unable to contemplate a return to work [PRIVATE].

The panel determined that the following conditions are appropriate and proportionate in this case:

- 1. You must not work as the sole registered nurse on any shift.*
- 2. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a Personal Development Plan designed to address the concerns about the following areas of your practice:*
 - a. Documentation and record keeping.*
 - b. Observations and assessment of patients including Vital signs monitoring.*
 - c. Escalation of concerns.*
 - d. Adherence to policies.*
- 3. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan.*
- 4. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC prior to any NMC review hearing or meeting.*
- 5. You must tell the NMC within seven days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
- 6. You must tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you within seven days of you receiving notice of them.*
- 7.*

- a. *You must within seven days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*
 - b. *You must within seven days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
8. *You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (7) above, to them:*
- a. *Any organisation or person employing, contracting with, or using you to undertake nursing work;*
 - b. *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services;*
 - c. *Any prospective employer (at the time of application) where you are applying for any nursing appointment; and*
 - d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application).*

The period of this order is for 12 months.

The panel determined that 12 months would provide Mrs Mottershaw sufficient time to [PRIVATE], to successfully complete a test of competence or a return to practice course and to secure employment as a registered nurse.

Before the order expires, a panel will hold a review hearing to see how well Mrs Mottershaw has complied with the order. At the review hearing the panel

may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Evidence of professional development, including an up to date reflective statement demonstrating insight into the charges found proved.*
- *Any references or testimonials commenting on Mrs Mottershaw's performance as a registered nurse or in any other employment, particularly in a health care setting.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Mottershaw'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 and email response from Mrs Mottershaw. It has taken account of the submissions made by Mr Webb on behalf of the NMC. He provided the panel with a background to the matter and the new information before the panel today. Mr Webb told the panel that between 2 and 13 April 2021, Mrs Mottershaw told her NMC Case Officer that she intended to apply for a Return to Practice Course. However, he invited the panel to consider Mrs Mottershaw's email to her Case Officer, dated 26 January 2022, which states:

'I have spent many hours considering what to do. I eventually decided that at my age i [sic] couldn't start again in my nursing career. Maybe 6 years ago it would have been easier. Despite being just a band 5 in A and E, I was previously a band 7 equivalent in Diabetes Nursing. Having worked in Research and had an article published.

Nursing in the wards has changed so much throughout my career and I fear that I would simply be paranoid about everything I would do and be constantly double checking myself. I also am aware I would find it difficult to trust my colleagues and this would not make for a pleasant working experience for me or my colleagues.

[...]

I am currently working as an activities coordinator in a rehabilitation residential home for people with brain injuries.

I only started this role in December but am thoroughly enjoying using my creative skills and hobbies but knowing my previous nursing experience helps in planning beneficial activities to enhance their recovery.

My decision will have to be I won't be attending the review and won't be pursuing getting back into nursing.'

Mr Webb told the panel that Mrs Mottershaw's Case Officer advised her, in an email dated 26 January 2022, as to her options about requesting that the panel let the current order lapse, and the consequences of this should she wish to return to nursing. He said that Mrs Mottershaw has not engaged with the NMC since her email of 26 January 2022.

In respect of impairment, Mr Webb submitted that Mrs Mottershaw's fitness to practise remains currently impaired. He said that there has been no change in circumstances since the imposition of the order which shows that the concerns about her practice have reduced. He submitted that there remains a risk to the public were Mrs Mottershaw permitted to practise as a nurse without restriction.

In respect of sanction, Mr Webb first invited the panel to consider allowing the order to lapse. He invited the panel to consider the guidance '*Allowing orders to expire when a nurse or midwife's registration will lapse*', which sets out:

'Taking this option is likely to be appropriate if:

- *The nurse, midwife or nursing associate's registration is only active because of the substantive order being in place,*
- *The nurse, midwife or nursing associate doesn't want to continue practising; and*
- *The public are protected because the panel have made a clear finding that the nurse, midwife or nursing associate's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse, midwife or nursing associate attempts to re-join the register.'*

Mr Webb submitted that the first and third limbs of the guidance would be satisfied, were the panel to make a finding of current impairment as Mrs Mottershaw's registration is currently active by virtue of the conditions of practice order on her registration.

In respect of Mrs Mottershaw's intention to continue practising, Mr Webb told the panel that her engagement with the NMC has been varied. He referred the panel to Mrs Mottershaw's most recent email and lack of engagement thereafter, and invited the panel to consider whether this email demonstrates an intention to cease nursing. He reminded the panel that, should Mrs Mottershaw change her mind and wish to return to nursing, she must seek the permission of the NMC before being readmitted to the register. In light of this, Mr Webb submitted that allowing the order to lapse would satisfy the public protection issues identified by the original panel.

Mr Webb submitted that imposing a caution order would be inappropriate in these circumstances, as it would not serve to protect the public. He further submitted that extending the conditions of practice order would not serve any useful purpose in light of Mrs Mottershaw's intention not to return to nursing. Mr Webb told the panel that a suspension or strike off order would satisfy the public protection issues identified by the original panel, however, he invited the panel to assess whether a suspension or strike off order is necessary given the nature and severity of the initial charges found proved.

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 Mrs Mottershaw's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Mottershaw showed partial insight and accepted responsibility for her actions. It also found that she had not demonstrated insight into the potential consequences of her actions, although she had expressed remorse and regret. It considered her misconduct remediable and that a conditions of practice order would protect the public and allow Mrs Mottershaw to remediate her practice. Today's panel has received no evidence of remediation by Mrs Mottershaw. In light of this, this panel determined that Mrs Mottershaw 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 noted that the original panel did not find impairment on public interest grounds, and this panel considers a finding of continued impairment on public interest grounds is not required for the same reasons.

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

Decision and reasons on sanction

Having found Mrs Mottershaw'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 had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator. Having considered its

findings on impairment, the panel was satisfied that the finding of impairment alone would be sufficient to satisfy public protection.

The panel considered the NMC's guidance on allowing orders to expire when a nurse or midwife's registration will lapse. The panel noted that Mrs Mottershaw's registration only remains active due to the current conditions of practice order and will lapse if the current order lapses.

In respect of Mrs Mottershaw's intentions to continue nursing, the panel was mindful that in April 2021, she had advised the NMC that she wished to participate in a Return to Practice course, but noted that there is no evidence that she had taken subsequent steps to enrol in such course. However, the panel considered Mrs Mottershaw's email, dated 26 January 2022 stating that she is now working in a new role which does not require her NMC PIN, and that she does not intend to return to nursing. It also had regard to the response provided by the NMC, and the advice given as to the options open to today's panel. The panel was satisfied that Mrs Mottershaw has disengaged from the NMC process and understood her email of 26 January 2022 to be Mrs Mottershaw's clear intention to leave nursing.

The panel determined that the public would remain protected should the order be allowed to lapse as, if Mrs Mottershaw applied to re-join the register, the decision maker would be aware of this panel's finding of current impairment.

The substantive conditions of practice order will be allowed to lapse at the end of the current period of imposition, namely the end of 12 April 2022 in accordance with Article 30(1).

This will be confirmed to Mrs Mottershaw in writing.

That concludes this determination.