

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

**Restoration Hearing
Thursday 11 January 2024**

Virtual Hearing

Name of Applicant: Gail Purdie

NMC PIN: 95J0207S

Part(s) of the register: Registered Nurse – RNMH
Mental Health - September 1998

Relevant Location: Midlothian Council

Panel members: Phil Lowe (Chair, lay member)
Michael Duque (Registrant member)
Georgina Wilkinson (Lay member)

Legal Assessor: Marian Killen

Hearings Coordinator: Rene Aktar

Nursing and Midwifery Council: Represented by Arthur Lo, Case Presenter

Mrs Purdie: Present and represented by Simon Holborn,
(NMC Watch)

Outcome: Application granted

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Lo, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Holborn, on your behalf, did not oppose this application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined that any matters relating to your health should be heard in private. The remainder of the hearing should be heard in public.

Determination of application for Restoration to the Register:

This is a hearing of your first application for restoration to the Nursing and Midwifery Council ("NMC") Register. A panel of the Fitness to Practise Committee directed on 22 March 2017 that your name be removed from the register based on its findings with regard to the facts of your case and your impairment. This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 ("the Order"), as at least five years have now elapsed since the date of the striking-off order.

At this hearing the panel may reject your application, or it may grant your application unconditionally. It may grant your application subject to your undertaking specified training and it may make a conditions of practice order.

The panel has considered your application for restoration to the Council's Register.

Background

'The agreed facts are as follows:

1. Mrs Purdie qualified as a mental health nurse in 1998. She was employed by NHS Lothian from August 2000, and as a Band 5 Community Staff Nurse in the Intensive Home Treatment Team, within Midlothian Health and Social Care Partnership ("the Partnership") from July 2005 to 22 March 2016.

2. Mrs Purdie's role at the Partnership included visiting mostly adult patients, who required intensive input due to mental health issues. As part of the role Mrs Purdie had access to patient records. Access to the records was strictly only permitted to meet work requirements. This meant that normally Mrs Purdie would access records for her own patients, but there might be instances when she could be asked to access another patient in the team or the area if, for example, an incorrect referral was received. However, it is agreed that Mrs Purdie was only permitted to access records for patients being seen by her, or on her list, and for genuine work-related reasons.

3. In December 2015, a routine Fair Warning Audit, which is generated by the TRAK computer system for patient records, identified that Mrs Purdie had accessed patient records under the surname "Purdie".

4. In view of the above, Keith Brunton- Clinical Advisor, ran a check on other records accessed by Mrs Purdie which showed she had accessed the records of at least 71 people between 17 January 2015 and 11 December 2015. There was no apparent clinical reason why these records should have been accessed by Mrs Purdie.

5. The records accessed included 5 records with the surname "Purdie"; various members of the same families; and the records of a number of children, who were outside the area of Mrs Purdie's nursing practice. Many of the records had been accessed multiple times; one such record having been accessed on 33

separate occasions. All but two records were accessed in depth, looking at both nursing and medical notes, so it was considered highly unlikely for such actions to have been a mistake. Access was spread fairly evenly throughout the year, without any particular pattern to the activity.

6. On 3 February 2016, Mrs Purdie attended an investigatory meeting and admitted to having accessed the records shown on the Fair Warning Report, without clinical reason. [PRIVATE]. On some occasions, Mrs Purdie accessed a separate record for a parent and his or her child. Several incidences of access consisted of looking at multiple screens for the patient in question.

7. Mrs Purdie was not able to give exact reasons for accessing the records. [PRIVATE].

8. Mrs Purdie agrees that she received training on information governance and was well aware of the requirements relating to confidentiality and appropriate access to records. Further, training on TRAK and confidentiality was provided to her at the time that it was being rolled out. Additionally, Mrs Purdie completed information governance training on 21 April 2015.

9. Following the conclusion of the disciplinary process on 22 March 2016, Mrs Purdie was dismissed from her role. Subsequently Mrs Purdie was referred to the NMC on 7 April 2016 by Sarah Ballard-Smith, the Nurse Director of Acute Services for NHS Lothian.'

The panel at the substantive hearing on 22 March 2017 considered the following charges:

That you, a registered nurse:

1. On one or more occasions between 17 January and 11 December 2015, accessed the healthcare records of one or more of the persons set out in Schedule 1 without clinical justification for doing so.

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

You did not attend the substantive hearing 22 March 2017, and you made admissions to all the charges. The panel at the substantive hearing found all of the charges proved.

The substantive hearing panel, determined the following with regard to impairment:

'18. Mrs Purdie admits that her fitness to practise is impaired by reason of her misconduct, taking into account the guidance set out in Dame Janet Smith's Fifth Shipman Report and cited with approval by Mrs Justice Cox in the case of CHRE v NMC Grant [2011] EWHC 927 (Admin), in that she:

- Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or*
- Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions.*

19. It is agreed between the parties that the allegations are serious in nature. Although no known patient harm resulted from the conduct, it is agreed that there was clear potential for significant, unwarranted, patient harm as Mrs Purdie breached the privacy of those patients whose records she accessed. Mrs Purdie's actions fell far short of what would be proper in the circumstances and by her actions breached the fundamental principles of patient confidentiality on numerous occasions over a prolonged period of time. It is agreed that by her actions, Mrs Purdie brought the nursing profession into disrepute.

20. Having been confronted, Mrs Purdie has been consistent in admitting the conduct referred to in the charges and appears to have been open and honest in

relation to the local and NMC investigation into such matters. She has engaged with both the local, and NMC, investigations. In describing her regret and shame about the events, Mrs Purdie has expressed remorse. Mrs Purdie has reflected upon the events, and copies of her recent reflection are annexed to these agreements (Annex 2). However, it is acknowledged by Mrs Purdie that she is not fully able to explain her motivation for her actions. Despite having shown limited insight into the admitted misconduct, Mrs Purdie has not provided any substantive evidence of reflection and remediation.

21. Additionally, it has not been possible for Mrs Purdie to demonstrate that she has remediated the conduct in practice and, therefore, the risk of repetition of the conduct concerned remains. Accordingly, Mrs Purdie agrees that her fitness to practise is impaired on public protection grounds.

22. The parties also agree that Mrs Purdie's departure from the appropriate standards are so serious that the public interest calls for a finding of impairment to maintain trust and confidence in the profession and regulatory system.'

The substantive panel went on to determine the following with regard to sanction:

'23. The parties have considered an appropriate sanction in light of the Indicative Sanctions Guidance to Panels ("the ISG"). The parties agree that the appropriate sanction in this case is a striking off order.

24. Mrs Purdie's misconduct is particularly serious in that the allegations relate to a large number of records, accessed over a prolonged period. Although there was no clinical harm to the patients, their right to privacy and dignity has been affected. Despite the fact that she explained some of her wrongful access arose from concerns about the people in question, Mrs Purdie did not follow correct protocols to escalate her concerns. Mrs Purdie also admitted that she had no reason for accessing the majority of the records and that she did not know why she had done so. Mrs Purdie's actions were not due to a lack of knowledge or

skill concerning patient confidentiality, since she was aware of the principles and reasons behind them, but displayed a serious lack of judgement.

25. When determining the issue of sanction, the following aggravating and mitigating factors have been taken into account:

26. The aggravating factors are:

26.1 Mrs Purdie's conduct had potential for unwarranted patient harm;

26.2 The conduct continued over a considerable period of time;

26.3 The conduct related to a large number of patients, including children;

26.4 [PRIVATE] but none of the patients had provided either express or implied consent to access the records concerned;

26.5 Mrs Purdie had undertaken, training so knew she should not be accessing the information and records without consent and/or clinical justification;

26.6 There was no clinical, or legitimate, reason for Mrs Purdie to access the highly, sensitive, personal information;

26.7 Mrs Purdie failed to follow guidance and protocols in relation to confidentiality;

26.8 The scale of Mrs Purdie's conduct, and inability to explain the same, gives rise to the risk of repetition; and

26.9 Mrs Purdie's conduct has the potential to undermine trust and confidence in the profession.

27. The mitigating factors are:

27.1 There were no previous concerns regarding Mrs Purdie's practice;

27.2 Mrs Purdie engaged with the local investigation and made admissions. Similarly, she has made admissions in these proceedings;

27.3 It appears that Mrs Purdie accessed some of the records out of concern for some of the patients, albeit that such action was seriously misguided;

[PRIVATE].

27.5 Mrs Purdie had shown some insight by accepting responsibility, recognising the seriousness of the conduct and showing some remorse; and

27.6 Mrs Purdie has stated that she accepts the need to act differently in the future.

28. In considering the available sanctions, it is agreed that this is not a case in which it would be appropriate to take no further action. This is on the basis that the conduct, taking into account the aggravating factors, was so serious that some form of regulatory action in the form of sanction must be taken in order to discharge the NMC's duty to protect members of the public and to uphold proper standards of conduct and behaviour and to maintain the reputation of the profession and the NMC as a regulator.

29. It is also agreed that a caution order would not be appropriate. Mrs Purdie's conduct was so serious that it cannot be said to fall within the lower end of the spectrum of impaired fitness to practise. Further, a caution order would not restrict Mrs Purdie from practising and therefore would not provide adequate protection to members of the public. It would also not be sufficient to satisfy the public interest and maintain public confidence in the profession.

30. It is agreed between the parties that a conditions of practice order would not sufficiently address Mrs Purdie's serious misconduct in this matter, which relates

to multiple breaches in relation to confidential records and information. No concerns have been raised in relation to Mrs Purdie's clinical ability and, therefore, a Conditions of Practice Order would not be an appropriate sanction, nor would it reflect the seriousness of the misconduct. Further, the nature of the admitted misconduct is such that there are no workable conditions which could be put in place to adequately protect patients and the public interest.

31. A suspension order is not an appropriate sanction in that a period of suspension will not be appropriate to protect patients and the public interest (para 65.2 of ISG), particularly taking into account the seriousness of the misconduct and the extent of Mrs Purdie's departure from the standards expected of a registered nurse (para 66 of ISG). Further, this was not a single instance of misconduct (para 67.1 of ISG). In addition, the type of misconduct referred to in the charges was repeated in incidents involving over 70 patients over a ten-month period in 2015. As a consequence, the nature and seriousness of the misconduct is fundamentally incompatible with continuing to be a registered nurse (para 67 of ISG).

32. The parties agree that a striking off order is the only appropriate sanction which would both protect the public and satisfy the wider public interest. Mrs Purdie's conduct is fundamentally incompatible with ongoing registration. In that regard, it is relevant that Mrs Purdie's conduct was a serious departure from the Code (para 71.1.1 ISG). In addition, Mrs Purdie's conduct shows a lack of trustworthiness, notwithstanding that there were no concerns around her clinical skills or any other risk of harm to the public than that referred to above (para 71.7 of ISG). Mrs Purdie's actions have brought the profession into disrepute in view of the overwhelming requirement to ensure data protection, confidentiality and privacy of sensitive patient information.

Submissions and evidence

This panel has had regard to the submissions of Mr Lo. It also took account of your evidence as well as the contents of the application for restoration which you submitted

to the NMC containing written references and several accompanying documents, which included several training certificates.

Mr Lo outlined the background of the case and the facts that led to the striking-off order. He referred this panel to the previous panel's decision which resulted in your removal from the NMC's register. Mr Lo referred the panel to the test set out in Article 33(5) of the Order. Mr Lo outlined the NMC Guidance on Restoration and referred the panel to the principles identified in the case of the Court of Appeal in *GMC v Chandra [2018] EWCA Civ 1898*.

Mr Lo reminded the panel of its responsibilities and submitted that it is entirely for the panel to decide whether you are of fit and proper character to be granted access to the NMC Register.

Mr Holborn expressed the view that as it was incumbent upon the applicant to persuade the panel of the merits of your case, you would give evidence directly under his questioning.

You provided evidence under oath. You submitted that you have always been interested in mental health and took a specific interest in adult nursing. You said you previously worked in an acute admission ward and initially wanted to get a bit of experience but ended up staying there for around 6 to 7 years. You said you decided to take up a role of a Community Psychiatric Nurse. You said you later got the opportunity to join an intensive home treatment team. You said that this role was intensive, and it was to prevent admissions and facilitate early discharge from hospital, and you would visit people's houses 2 to 3 times a day.

[PRIVATE].

[PRIVATE].

You said that you are currently a Community Link worker and that you are based in a General Practice. You said your role is non-medical and designed to support patients with non-medical issues such as housing, benefits and financial challenges. You said

that you have built relationships with patients and that you have been using transferable nursing skills.

You said that you would love to come back to nursing and to use all your skills. You said that you would like to make up for what you did. You said that your colleagues in your previous job who have written the references, were encouraging and supportive which gave you a lot of confidence and you decided to apply for restoration to the register.

You said that you had done quite a lot of training in mental health specific courses. You also stated you had done a lot of reading to keep up to date with nursing practice.

[PRIVATE].

Following panel questions about your reflective piece where you state that curiosity and a toxic culture was a reason for your behaviour, you said that it was an open secret in the office that people looked at notes they shouldn't have. That this was not an excuse but that it is what happened, and no one said anything.

You said that if you were in an environment in which this would happen again that you would speak up and make people aware that it was happening. You said that you would definitely do something about it. You said that just because everyone is doing it, does not make it okay.

The panel asked about the impact your actions had on those whose data you accessed. You said that it must have been horrible. [PRIVATE]. You said that it could have led them to lose trust in you, the profession and the organisation.

The panel accepted the advice of the legal assessor, who advised the panel in accordance with the decision of the Court of Appeal in *GMC v Chandra [2018] EWCA Civ 1898*.

The legal assessor referred the panel to the test provided in Article 33(5) of the Order. Firstly, you must satisfy the panel that you satisfy the requirements of Article 9(2)(a)

(approved qualification and prescribed education, training and experience) and Article 9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2017, you are a “fit and proper person to practise as a registered nurse”. The legal assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

Decision on the application for restoration

The panel has considered your application for restoration to the NMC register very carefully. It has decided to allow the application subject to your successful completion of a return to practice course.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel was of the view that you have shown good insight into your actions, as set out in the charges. After you had been questioned at length by Mr Holborn and the panel itself, the panel concluded that you gave reliable, sincere and insightful evidence at today’s hearing. The panel was of the view that you fully addressed how your actions have affected patients, your colleagues, the profession and the wider public confidence in the professions. The panel was satisfied at this hearing, you have taken responsibility for your actions and have shown remorse for them.

The panel next considered your remediation. The panel was satisfied that you have done everything within your power to remedy your actions. It noted the relevant training you have undertaken since you were struck off. Further, the panel noted that you have not repeated your actions, as set out in the charges, nor have you had any concerns raised regarding your employment. The panel took into account that although you are

not currently a registered nurse, you have engaged in your profession as well as using transferable skills.

The panel then considered if you are a “*fit and proper*” person. The panel was of the view that, due to your remediation and insight into the charges, you are a fit and proper person to be allowed back on to the NMC Register. The panel was impressed by your commitment to the nursing profession and was satisfied that you have kept up to date with current nursing practices, as best you could in the circumstances of your current employment. The panel had sight of the references provided attesting positively to your hard-working nature, as well as your conduct and behaviour.

Having determined that you have demonstrated insight, remediation and remorse and have shown commitment to returning to the nursing profession, the panel then considered whether a return to practise would be supportive of all three limbs of the overarching objective or if it would undermine public confidence. The panel determined that in the circumstances as documented in this decision, a return to safe practice would be supportive of the overarching objective.

In determining to grant your application for restoration the panel bore in mind that you have not practised as a registered nurse since 2017 and that you no longer meet the requirements for registration with the NMC on this basis. However, the panel determined to allow your application for restoration subject to your completion of a Return to Practice course and paying the prescribed fee which satisfies the requirements of Article 19(3) and Article 33(7)(a). This article states:

“The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards.”

“(7) On granting an application for restoration, the Committee—

(a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and”

That concludes this determination.

This decision will be confirmed to you in writing.