

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

**Substantive Order Review Meeting
Tuesday 27 July 2021**

Virtual Hearing

Name of registrant: David Martin Davies

NMC PIN: 77B0740E

Part(s) of the register: Registered Nurse - Mental Health
Mental Health Nursing – August 1980
Learning Disabilities – October 1982

Area of registered address: Dyfed

Type of case: Misconduct

Panel members: David Evans (Chair, Lay member)
Laura Scott (Registrant member)
Sue Davie (Lay member)

Legal Assessor: Andrew Lewis

Panel Secretary: Amira Ahmed

Order being reviewed: Suspension order (6 months)

Fitness to practise: Impaired

Outcome: **Striking-off order to come into effect on 27
August 2021 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 Mr Davies was not in attendance and that the Notice of Meeting had been sent to Mr Davies' registered email address on 8 June 2021.

The panel took into account that the Notice of Meeting provided details of the substantive order being reviewed, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mr Davies 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).

The panel was aware that the Nursing and Midwifery Council (NMC) had decided to deal with this matter as a private meeting as Mr Davies has failed to engage with the NMC for more than two years. The panel noted that Mr Davies was invited to submit documentary evidence in support of his case but none had been forthcoming. Whilst Mr Davies was not required to attend this meeting, the panel was satisfied that every effort had been made to secure the engagement of Mr Davies and that holding a meeting was an appropriate way to proceed.

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 27 August 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 Fitness to Practise Committee panel on 29 July 2020. This was reviewed on 19 January 2021 and a six month suspension order was imposed.

The current order is due to expire at the end of 27 August 2021.

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 19 June 2019, while employed as an agency nurse at Taith Cartref Nursing Home:

a) Said "I'm not having any of this" in response to Resident A exhibiting challenging behaviour.

b) Dragged Resident A into her room.

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:

"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 Davies' fitness to practise remains impaired.

The panel noted that Mr Davies had not engaged with the NMC proceedings to date, and had provided no evidence of insight, remediation to his practice or remorse for his failings. The panel further noted that the charges found proved were very serious, and without any information from Mr Davies to show that he was safe to practice, the risk of repetition remained. The panel 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 Mr Davies' 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 and the public protection issues identified, an order that does not restrict Mr Davies' 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 Davies' 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 conditions of practice on Mr Davies' registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that any conditions would be workable only with Mr Davies' engagement. The panel therefore decided that although the patient safety concerns in Mr Davies' case might have been appropriately remedied through a conditions of practice order, it was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Davies' misconduct.

The panel considered the imposition of a further period of suspension. It considered Mr Davies' lack of engagement with the NMC in the context of the ongoing COVID-19 pandemic, and took into account that undisclosed circumstances may have inhibited Mr Davies' engagement. The panel also took into account Mr Davies' long and otherwise unblemished nursing career. It was of the view that a suspension order would allow Mr Davies further time to fully reflect on his previous failings and to consider whether he still wished to pursue voluntary removal from the register.

The panel considered a striking-off order, but considered that it would be disproportionate in this case.

The panel concluded that a further six month suspension order would be the appropriate and proportionate response and would afford Mr Davies adequate time to further develop his insight and remediation.

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 six months would provide Mr Davies with an opportunity to engage with the NMC. It considered this to be the most appropriate and proportionate sanction available.

The panel noted that Mr Davies had previously requested voluntary removal from the NMC register, and wished to remind Mr Davies that continued engagement with the NMC would be necessary to pursue that course of action.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 28 February 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:

- *Mr Davies' engagement;*
- *A reflective piece;*
- *Evidence of remediation; and*
- *Character references"*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Davies' 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.

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 Davies fitness to practise remains impaired.

The panel noted that Mr Davies had not engaged with the NMC proceedings to date, and had provided no evidence of insight, remediation to his practice or remorse for his failings. The panel further noted that the charges found proved were very serious, and without any information from Mr Davies to show that he was safe to practice, the risk of repetition remained. In light of this the panel determined 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 Mr Davies fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Davies' 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 Davies' 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 Davies 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 conditions of practice on Mr Davies' registration would be a sufficient and appropriate sanction. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel bore in mind that any conditions would be workable only with Mr Davies' engagement. The panel therefore decided that although the patient safety concerns in Mr Davies' case might have been appropriately remedied through a conditions of practice order, it was not able to formulate conditions of practice that would adequately address the concerns relating to Mr Davies'

misconduct when there has been no engagement from Mr Davies with this case since his referral in June 2019.

The panel next considered imposing a further suspension order. The panel noted that Mr Davies has not engaged with the NMC in relation to this case for the past two years since his referral and despite repeated requests for his engagements following his substantive hearing in July 2020 and the first review of this order in January 2021. Further, Mr Davies has not demonstrated any insight into his previous failings or shown remorse for his misconduct. The panel was of the view that there was still no evidence from which it could conclude that Mr Davies was not a risk to the public. The panel determined that whilst a further period of suspension would serve to protect the public it would not address the public interest concerns arising from Mr Davies continued lack of engagement.

The panel determined that there was no longer a realistic prospect of Mr Davies remediating his misconduct or engaging with this process. An informed member of the public would not have confidence that the NMC took Mr Davies misconduct seriously if he continued to remain on the register given his non engagement. The panel decided that it was necessary to take action to prevent Mr Davies from practising in the future and protect public confidence. The panel 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 27 August 2021 in accordance with Article 30(1).

This decision will be confirmed to Mr Davies in writing.

That concludes this determination.