

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

**Substantive Order Review Hearing  
Thursday 6 October 2022**

Virtual Hearing

**Name of registrant:** Timothy Haydn Davies

**NMC PIN:** 91D1260E

**Part(s) of the register:** Registered Nurse – Sub part 1  
Mental health nurse - 26 March 1994

**Area of registered address:** West Northamptonshire

**Type of case:** Misconduct

**Panel members:** Peter Wrench (Chair, Lay member)  
Julie Clennell (Registrant member)  
Paul Grant (Lay member)

**Legal Assessor:** David Swinstead

**Hearings Coordinator:** Chandika Cheekhoory-Hughes-Jones

**Nursing and Midwifery Council:** Represented by Stefan Bisson, Case Presenter

**Mr Davies:** Not present and not represented

**Order being reviewed:** Suspension order (4 months)

**Fitness to practise:** Impaired

**Outcome:** **Striking-off order in accordance with Article  
30 (1)**

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

The panel was informed at the start of this hearing that Mr Davies was not in attendance and that the Notice of Hearing had been sent to Mr Davies' registered address by secure email on 1 September 2022.

Mr Bisson, 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 Mr Davies' right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

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

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

Mr Bisson submitted that there had been no engagement at all from Mr Davies with the NMC in relation to these proceedings for nearly three years. He stated that the last communication from Mr Davies was in 2019; Mr Davies did not attend the substantive hearing from 17 to 21 December 2021 nor did he communicate prior to the review meeting on 7 June 2022. Mr Bisson also referred to the on-table documents comprising of emails dated 1 September 2022 and 4 October 2022 from the NMC case officer to Mr Davies

where the NMC case officer enquired as to whether Mr Davies would be attending or would be represented at today's hearing. Mr Bisson submitted that there had been no response from Mr Davies to these emails. He stated that there is no information before the panel indicating that Mr Davies had requested an adjournment and submitted that as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel accepted the advice of the legal assessor. The legal assessor observed that in the email dated 4 October 2022, the NMC case officer wrote that today's hearing will take place on "*Wednesday 6 October 2022*" rather than on Thursday 6 October 2022. He advised that this was a typographic error and was not a significant factor as the date of the hearing was in fact correct.

Mr Bisson agreed with and supported the legal assessor's advice.

The panel has decided to proceed in the absence of Mr Davies. In reaching this decision, the panel has considered the submissions of Mr Bisson, and the advice of the legal assessor. It has had particular regard to the 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 Mr Davies,
- Mr Davies has not engaged with the NMC since 2019 and has not responded to any of the communication sent to him about this hearing,
- The NMC case officer's reference to "*Wednesday 6 October 2022*" rather than Thursday 6 October 2022 was clearly a typographic error. It also noted that Mr Davies has received other communication stating the correct day and date of today's hearing and that Mr Davies did not engage with these communications as well,
- There is no reason to suppose that adjourning would secure his 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 and in the public interest to proceed in the absence of Mr Davies.

## 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 November 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 Fitness to Practise Committee panel on 21 December 2022. This was reviewed on 7 June 2022 at a substantive order review meeting by a Fitness to Practise Committee panel and the order was extended for a further period of four months.

The current order is due to expire at the end of 19 November 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) *whilst on duty on 9 January 2018:*
  - a) *kissed Colleague A on the lips;*
  - b) *...*
  - c) *...*
  
- 2) *Your conduct at any and / or all of charge 1 above was:*
  - a) *inappropriate / crossed professional boundaries;*
  - b) *...*

*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 noted that the original panel found that Mr Davies had some insight but that it was not fully developed. At this meeting the panel had no new information to assess whether Mr Davies' level of insight has changed since the last hearing or if he has taken any steps to strengthen his practice in relation to the failings identified.*

*The original panel determined that Mr Davies was liable to repeat matters of the kind found proved at the original hearing. While today's panel is also of the view that the misconduct is remediable, it has received no new information and in light of this, the panel determined that Mr Davies remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment remains necessary on the grounds of public protection.*

*The panel has borne in mind that its primary function is both to protect the public and to meet 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 determines that Mr Davies' fitness to practise remains impaired on both public protection and public interest grounds.'*

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 Mr Davies' limited insight and lack of remediation. 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 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 order on Mr Davies' registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel took into consideration Mr Davies' lack of engagement with the NMC regulatory process since December 2019. The panel determined that any conditions imposed would not be workable as Mr Davies has not shown any recent willingness to engage with his regulator. The panel also bore in mind the nature 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 relevant 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 that extending the suspension order would allow Mr Davies time to engage, to reflect fully on his failings and to gain a full understanding of how his misconduct impacted on Colleague A, patients, other colleagues, the nursing profession and the wider public. The panel concluded that a further period of 4 months' suspension would be the appropriate and proportionate response. This would afford Mr Davies time to take steps to strengthen his practice. It would also give Mr Davies an opportunity to approach any current colleagues to attest to his conduct and behaviour in his workplace assignments since the substantive hearing.*

*The panel gave consideration to a striking-off order. It noted that Mr Davies had not engaged with the NMC since December 2019 and that this was his first period of suspension. The panel considered that, if Mr Davies were to*

*demonstrate adequate insight and the strengthening of his practice, it may well be in the public interest not to lose the services of an experienced registered nurse. The panel was of the view that a striking-off order was currently disproportionate and that Mr Davies should be afforded a further opportunity to re-engage with his regulator and to demonstrate insight and any steps he has taken to strengthen his practice.*

*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 extend the suspension order for a period of 4 months, with a review.*

*The extension to the suspension order will take effect upon the expiry of the current period of suspension, namely the end of 19 July 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 may be assisted by:*

- *Mr Davies' re-engagement with the NMC regulatory process.*
- *An indication from Mr Davies as to his intentions with regard to his future nursing career.*
- *A reflective piece demonstrating Mr Davies' insight into his misconduct, its impact on Colleague A, patients, other colleagues and public confidence in the nursing profession and what steps has taken to strengthen his practice.*
- *Any re-training undertaken to address the findings relating to professional boundaries, as well as any other professional development undertaken in order to keep Mr Davies' nursing skills up to date.*
- *Up-to-date testimonials, whether from paid or unpaid employment.'*

## **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. It has taken account of the submissions made by Mr Bisson.

Mr Bisson provided the panel with the background to the case. He submitted that Mr Davies has not engaged with the NMC for a significant period of time and not since 2019. He submitted that there is no information before the panel to demonstrate that Mr Davies has developed further insight than the panel identified in the first substantive hearing in December 2021. In light of this, Mr Bisson submitted that there is a real risk of repetition and that a member of the public would be concerned if Mr Davies was allowed to practise without restriction.

Mr Bisson submitted that Mr Davies' fitness to practise remains impaired and that there is nothing before the panel to demonstrate otherwise. With regards to sanction, he stated that this was a matter for the panel. Mr Bisson submitted that imposing no sanction would not satisfy the public interest in this case, and that, given the lack of engagement from Mr Davies, conditions of practice cannot be formulated and are not workable. He invited the panel to either impose a further period of suspension which would provide Mr Davies with a further opportunity to engage, or to impose a striking-off order if the panel deemed that Mr Davies has exhausted his opportunities to engage.

The panel 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 the original substantive hearing panel found that Mr Davies' misconduct amounted to a single incident, the misconduct was capable of remediation and that Mr Davies had presented an apology. However, today's panel took into account that Mr Davies appears to have disengaged from the proceedings. It noted that the last engagement from Mr Davies dates back to 2019; he did not engage with or attend the original substantive hearing nor the first review hearing. The panel determined that there is no information before it, and certainly no new information, to show that Mr Davies has addressed the issues identified by the original panel or otherwise demonstrated insight or remediation or taken active steps to demonstrate that his practice is no longer impaired.

In light of this, this panel determined that Mr Davies is 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 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 imposing conditions of practice on Mr Davies' 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 hearing. It also took into account that Mr Davies has not engaged with the NMC since 2019 and that he has seemingly disengaged from the proceedings. The panel therefore concluded that a conditions of practice order would not be workable, would serve no useful purpose and cannot be formulated so as to adequately protect the public or satisfy the public interest.

The panel next considered imposing a further suspension order. The panel noted that, whilst Mr Davies' misconduct was serious; it was a single incident, capable of remediation and was not in itself a striking-off offence. However, it also noted that Mr Davies has been provided with two formal occasions to engage with the proceedings and that on each occasion, he has failed to do so. It noted that there has been no engagement from Mr Davies since 2019 and there is no information before it to suggest that Mr Davies has an interest in engaging with the proceedings. It also took into account that Mr Davies has a duty to engage with his regulator and that it has been nearly five years since the misconduct occurred in January 2018.

In light of this, the panel concluded that unfortunately a further period of suspension would not serve any useful purpose in all of the circumstances. The panel also observed that given the circumstances and the evidence before it, simply prolonging the conclusion of the proceedings with a further period of suspension would not be in the public interest.

Based on the evidence before it, the panel determined 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 November 2022 in accordance with Article 30(1).

This decision will be confirmed to Mr Davies in writing.

That concludes this determination.