

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

**Substantive Order Review Meeting
Friday, 4 October 2024**

Virtual Meeting

Name of Registrant: Elaine Shortt

NMC PIN: 76E0829E

Part(s) of the register: Registered Nurse – Sub Part 2
RN2: Adult Nursing – 20 July 1978

Relevant Location: Nottinghamshire

Type of case: Misconduct

Panel members: Nicola Dale (Chair, Lay member)
Pamela Campbell (Registrant member)
Margaret Jolley (Lay member)

Legal Assessor: Ian Ashford-Thom

Hearings Coordinator: Samantha Aguilar

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 13 November 2024**

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 Shortt's registered address by recorded delivery and by first class post on 8 August 2024.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Meeting was sent to Mrs Shortt's registered address on 8 August 2024. It also took into account Mrs Shortt's handwritten letter dated 18 September 2024.

The panel took into account that the Notice of Meeting provided details of the review that the review meeting would be held no sooner than 30 September 2024 and inviting Mrs Shortt to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In light of all of the information available, the panel was satisfied that Mrs Shortt 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 current order

The panel decided to allow the order to lapse upon expiry in accordance with Article 30 (1). This order will come into effect at the end of 13 November 2024 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 13 October 2023.

The current order is due to expire at the end of 13 November 2024.

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, whilst working at Parkside Nursing Home Nottingham ('the Home'):

1. [...]
2. *On 27 July 2020, failed to manage Resident B's challenging behaviour in line with her care plan and/or Parkside Nursing Home's (the Home's) policy on Behaviour that Challenges. **[PROVED]***
3. *In response to Resident B's challenging behaviour:*
 - a. *Placed Resident B in the Home's sensory room without her consent. **[PROVED]***
 - b. [...]
 - c. *Did not monitor and/or ensure Resident B was monitored whilst in the sensory room. **[PROVED]***
 - d. *Did not remove Resident B from the sensory room when she became distressed and/or no longer consented to being placed there. **[PROVED]***
4. [...]
5. *On 27 July 2020, you failed to maintain proper records in relation to Resident B, in that you:*
 - a. *Failed to complete the challenging behaviour chart. **[PROVED]***
 - b. *Inaccurately completed Resident B's progress notes in that you made no reference to her being placed in the sensory room in response to her challenging behaviour. **[PROVED]***
6. [...]

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:

'The panel considered the Grant test and, given that none of the charges relating to dishonesty were found proved, was satisfied that the fourth limb is not relevant. However, it determined that all of the first three limbs of the test were engaged.

The panel determined that Mrs Shortt could have caused Resident B physical or psychological harm as a result of her misconduct. The panel found that Mrs Shortt's failure to treat Resident B with compassion, act as their advocate, provide them with appropriate care, and keep accurate records breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Mrs Shortt demonstrated a lack of insight in that she repeated her poor record keeping which was the focus of her previous self-referral. The panel considered this to indicate that Mrs Shortt did not learn from her previous mistakes and continued to fail to uphold proper standards. The panel noted that it has no up-to-date evidence from Mrs Shortt which shows an understanding of how her actions put residents at a risk of harm, how her actions negatively impacted the reputation of the nursing profession or how she would handle a similar situation differently in the future.

Further, the panel has not been provided with any evidence that Mrs Shortt has taken steps to strengthen her practice or remediate her actions. The panel had sight of Mrs Shortt's various training certificates dated August – September 2021, however none of the certificates are directly relevant to the charges found proved and they all expired in 2022. In addition, the panel noted the Case Examiners' Decision letter dated 27 January 2022 which states 'A reference, dated 3 September 2021 states that there are no issues or concerns regarding your conduct'. The panel did not have sight of the

reference in question, but it considered that the reference was probably provided without full knowledge of the regulatory concerns at the time, and also the concerns which led to Mrs Shortt's current referral.

The panel was not satisfied that the misconduct in this case has been addressed, and it determined that it did not have any evidence to satisfy it that Mrs Shortt could practise safely and with compassion or kindness if she were to return to nursing. For all the reasons above, the panel concluded that there is a high risk of repetition and, consequently, a significant risk of harm to patients. Therefore, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest.

The panel concluded that not making a finding of impairment in this case would undermine public confidence in the nursing profession and the NMC as a regulator, and go against upholding the proper professional standards for members of the profession. Therefore, the panel also found Mrs Shortt's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Shortt's fitness to practise is currently impaired.'

The original panel determined the following with regard to sanction:

'The panel noted Ms Rodio's submission regarding Mrs Shortt's previous referral and also the Case Examiners' decision that her insight and improvement were such that there was no case to answer at that time. However, the panel found it concerning that the further concerns about Mrs Shortt's record keeping were raised by the events in this case, occurring less than a year later than the earlier incident.

The panel took into account the following aggravating features:

- *Earlier concerns raised in a previous referral relating to Mrs Shortt's record keeping 37*
- *The abuse by Mrs Shortt of her position of trust in that she was the nurse in charge on the shift at the time of the incident*
- *Mrs Shortt's lack of insight into her failings and the impact of her actions and omissions*
- *Mrs Shortt's conduct put a vulnerable resident at risk of suffering harm*

The panel determined that there were no mitigating features in this case.

[...]

The panel was satisfied that the misconduct in this case was not fundamentally incompatible with remaining on the register, and there was no evidence from the facts found proved, all of which occurred during a single shift, that Mrs Shortt had harmful deep-seated personality or attitudinal problems. Although the previous referral revealed an earlier concern about Mrs Shortt's record keeping, the panel noted that the Case Examiners found that she had shown insight in relation to that incident of poor record keeping and this panel had not heard any explanation from her in relation to the current further incident of poor record keeping.

In making this decision, the panel carefully considered the submissions of Ms Rodio in relation to imposing a striking-off order but, taking account of all the information before it, the panel concluded that it would be disproportionate. Whilst the panel acknowledged that a suspension may have a punitive effect, it would be unduly punitive in Mrs Shortt's case to impose a striking-off order particularly since the most serious elements of the charges against her, namely dishonesty and an intention to punish Resident B, had not been found proved.

Balancing all of these factors, the panel concluded that a suspension order would be the appropriate and proportionate sanction. The panel was of the view that a suspension order would protect the public by preventing Mrs Shortt from practising for a period, and it would give her the opportunity to

reflect further on whether or not she would like to return to nursing and, if she does, to demonstrate any insight she may have developed following the panel's findings.

The panel noted the hardship such an order could cause Mrs Shortt. However, this is outweighed by the public interest.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel determined that a suspension order for a period of 12 months was appropriate in this case to allow Mrs Shortt time to think about if she wishes to reengage with the NMC and demonstrate insight, and to satisfy the public interest.

At 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 Shortt's engagement with the NMC and attendance at any future hearing*
- *A reflective statement detailing the impact of Mrs Shortt's conduct on Resident B and colleagues at the Home, the profession as a whole, and the wider public*
- *Evidence of how Mrs Shortt has kept up-to-date professionally during the period of suspension, and any plans she may have to return to nursing*
- *If Mrs Shortt has been in employment, testimonials from colleagues either through recent unpaid or paid employment'*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs Shortt'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 the letter from Mrs Shortt dated 18 September 2024.

The panel heard and accepted the advice of the legal assessor. This included references to *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

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 Shortt's fitness to practise remains impaired.

The panel noted that the original panel found that Mrs Shortt had a lack of insight and that imposing a 12-month suspension order was appropriate in satisfying the public protection and public interest considerations in this case and stated:

[...] it would give her the opportunity to reflect further on whether or not she would like to return to nursing and, if she does, to demonstrate any insight she may have developed following the panel's findings.'

At this meeting, the panel carefully considered Mrs Shortt's letter dated 18 September 2024, in which she stated:

'[...] I fully understand that these accusations have to be fully investigated, I could not attend any hearings [PRIVATE]. I am now [PRIVATE] and will not be returning to any form of employment in the future.

I have enjoyed my position as a nurse and found hard the allegations made against me. [...]

The panel has not seen any evidence before it which demonstrated further insight from Mrs Shortt or any new information to show any evidence of strengthening of practice or remediation except for Mrs Shortt's letter expressing she has not maintained or developed her practice because she has made the decision [PRIVATE]. Whilst the letter shows a degree of engagement with the NMC, as a result of her decision [PRIVATE], she has not carried out any of the recommendations suggested by the original panel. Given that there is no material change to the risk, 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 Shortt's fitness to practise remains impaired.

Having found that Mrs Shortt's fitness to practise is currently impaired, the panel then considered what action is appropriate. The panel has noted that Mrs Shortt has now been on the nursing register for 46 years. Mrs Shortt has clearly expressed that she is [PRIVATE] and has no intention to return to practise as a nurse. The panel noted that, but for the continuation of these proceedings, Mrs Shortt's registration would have lapsed on 31 July 2022 when her registration fee expired. The panel decided that, in these circumstances, allowing Mrs Shortt's registration to lapse is the appropriate action.

The panel considered both an extension of the suspension order or the imposition of a striking off order. However, it determined that a further order would serve no useful

purpose, and a striking off order would be disproportionate and unnecessarily punitive in its effect.

The substantive suspension order will lapse upon expiry, namely the end of 13 November 2024 in accordance with Article 30(1). Mrs Shortt's pin will expire automatically when the order lapses. As a result, Mrs Shortt will cease to be a registered nurse and will be unable to practise as such.

In the event that Mrs Shortt wishes to re-join the register, the Registrar will take into account Mrs Shortt's current impairment before she is allowed to re-enter the register.

This will be confirmed to Mrs Shortt in writing.

That concludes this determination.