

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

**Substantive Order Review Meeting
Wednesday, 26 February 2025**

Virtual Meeting

Name of Registrant: Mr Brian Davenport

NMC PIN 01E0478E

Part(s) of the register: Nurses part of the register Sub part 1
RNA: Adult nurse, level 1 (20 September 2004)

Relevant Location: Cornwall

Type of case: Misconduct and Conviction

Panel members: Derek McFaul (Chair, Lay member)
Vanessa Bailey (Registrant member)
Oluremi Alabi (Lay member)

Legal Assessor: Graeme Henderson

Hearings Coordinator: Anya Sharma

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: **Striking-Off order to come into effect at the end of
15 April 2025 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 the Notice of Meeting had been sent to Mr Davenport's registered address by recorded delivery and by first class post on 9 January 2025.

The panel had regard to the Royal Mail customer receipt which showed the Notice of Meeting was posted to Mr Davenport's registered address on 9 January 2025.

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 24 February 2025 and inviting Mr Davenport to provide any written evidence seven days before this date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Davenport 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 impose a striking-off order. This order will come into effect at the end of 15 April 2025 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 15 March 2024.

The current order is due to expire at the end of 15 April 2025.

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 11 June 2022, intended to attend your night shift whilst under the influence of alcohol. **[FOUND PROVED]**

2) [PRIVATE]

a) [PRIVATE] **[FOUND PROVED]**

b) [PRIVATE] **[FOUND PROVED]**

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 next considered whether as a result of the misconduct and conviction, Mr Davenport's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional uphold the proper standards expected of a registered nurse. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of CHRE v NMC and Grant in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:

- a) 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*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *...'*

The panel finds that Mr Davenport was potentially liable to put patients at unwarranted risk of harm if he had attended work on 11 June 2022. [PRIVATE]

Mr Davenport's misconduct and conviction had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Mr Davenport has disengaged from the NMC and there is no evidence of any insight or information on how he has addressed the regulatory concerns.

[PRIVATE]

The panel was not satisfied that Mr Davenport has addressed the regulatory concerns. It therefore determined that there is a risk of repetition of the misconduct and a risk of harm to the public. It therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel was aware of 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. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a well-informed member of the public would be concerned to know that a registered nurse [PRIVATE] if a finding of impairment were not made.

In addition, the panel concluded that public confidence in the profession and the NMC as regulator would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Davenport's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Davenport's fitness to practice is currently impaired.

The original panel determined the following with regard to sanction:

Having found Mr Davenport's fitness to practise currently impaired, the panel considered what sanction, if any, it should impose. It has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

Before looking at the aggravating features, the panel noted there was reference to Mr Davenport having a previous offence of the same nature and was directed to the Memorandum of Conviction. However, the panel saw no mention of a previous offence in the bundle provided by the NMC and therefore did not consider this in its findings.

The panel found there to be the following aggravating features:

- *[PRIVATE], intending to attend a night shift which would potentially put patients at risk of harm*
- *Harm was caused to a member of the public*
- *Not cooperated with the NMC as regulator*

[PRIVATE] The panel could not find any mitigating features.

The panel considered whether to take no further 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, the public protection and public interest issues identified, an order that does not restrict Mr Davenport's 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 Davenport's misconduct and conviction 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 considered whether placing conditions of practice on Mr Davenport'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 and determined that the charges against Mr Davenport were not in relation to his clinical practice. It considered that Mr Davenport has also disengaged from the NMC.

The panel determined that there were no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on Mr Davenport's registration would not adequately address the seriousness of this case, nor would it maintain public confidence in the profession or the NMC as regulator.

The panel therefore considered whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- A single instance of misconduct but where a lesser sanction is not sufficient;*
- No evidence of harmful deep-seated personality or attitudinal problems;*
- No evidence of repetition of behaviour since the incident;*
- ...*

The panel was satisfied that Mr Davenport's misconduct and conviction were not fundamentally incompatible with his remaining on the register.

The panel did consider whether a striking-off order would be proportionate but, taking account all the information before it, the panel concluded that this would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mr Davenport's case to impose a striking-off order.

Balancing all these factors the panel has concluded that a suspension order would be the most appropriate and proportionate sanction as it would protect the public and address the wider public interest concerns.

Although this order may cause Mr Davenport hardship, this is outweighed by the public interest.

The panel determined 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 with a review was appropriate in this case to mark the seriousness of the misconduct and conviction.

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:

- A clear indication from Mr Davenport on whether he will engage with the NMC and what his intentions are for the future,*
- Medical evidence of Mr Davenport's current health*

Decision and reasons on current impairment

The panel has considered carefully whether Mr Davenport's fitness to practise remains impaired. As this meeting is a review, there is a persuasive burden on Mr Davenport to satisfy the panel that he is no longer impaired. 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 Davenport's fitness to practise remains impaired.

The panel noted that the original panel had no evidence of any insight or information on how Mr Davenport had addressed the regulatory concerns. At this meeting, this panel considered that it has no new information before it to suggest that Mr Davenport has taken steps to develop his insight and there has been no change in circumstances from the last substantive meeting. This panel noted that the recommendations that were made by the original substantive panel have not been addressed by Mr Davenport, and the position remains the same. [PRIVATE]

The panel noted that it appears that Mr Davenport has disengaged, despite the NMC's extensive efforts to contact him via telephone call to his last known telephone number and written correspondence sent by registered post to his last known registered address. The panel noted that Mr Davenport's last contact with the NMC was an email which he sent to his NMC case officer on 10 January 2023, in which he stated:

'I have no desire to enter nursing again, and as I am suspended I see no need to answer any further questions. ... Please do not contact me further.'

This panel was therefore satisfied that Mr Davenport has not addressed the regulatory concerns, he is voluntarily disengaged and has communicated that he has no further intentions to engage with the NMC. The panel therefore determined that a risk of repetition and a risk of harm remains.

In light of this the panel determined that Mr Davenport 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 Davenport's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Mr Davenport 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 Davenport's 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 Davenport's 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 a conditions of practice on Mr Davenport'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 bore in mind the seriousness of the facts found proved at the original meeting 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 conditions of practice that would adequately address the concerns relating to Mr Davenport's misconduct and conviction.

The panel noted that Mr Davenport has indicated in an email dated 10 January 2023 that he has no desire to enter nursing again and has asked to not be contacted further by the NMC. In view of Mr Davenport's clear settled intention not to return to nursing, the panel considered that any conditions of practice order would not be workable and would serve no useful purpose.

The panel next considered imposing a further suspension order. The panel noted that Mr Davenport has voluntarily disengaged from the NMC and as a result has not produced any evidence of remorse for his misconduct. Further, Mr Davenport has not demonstrated any insight into his previous failings. The panel was of the view that evidence would be required to show that Mr Davenport no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all the circumstances given Mr Davenport's disengagement with proceedings. The panel also has a duty to dispose of cases expeditiously. The panel determined that it was necessary to take action to prevent Mr Davenport from practising in the future and concluded that the 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 15 April 2025 in accordance with Article 30(1)

This decision will be confirmed to Mr Davenport in writing.

That concludes this determination.