

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

**Substantive Hearing  
Monday, 4 March 2024**

Virtual Hearing

<b>Name of Registrant:</b>	Helen Marie Powell
<b>NMC PIN</b>	08G0291W
<b>Part(s) of the register:</b>	Registered Nurse – Mental Health (September 2008)
<b>Relevant Location:</b>	Wales
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Paul Grant (Chair, Lay member) Jane Jones (Registrant member) Susan Laycock (Lay member)
<b>Legal Assessor:</b>	Tim Bradbury
<b>Hearings Coordinator:</b>	Dilay Bekteshi
<b>Nursing and Midwifery Council:</b>	Represented by Mohsin Malik, Case Presenter
<b>Miss Powell:</b>	Not present and not represented
<b>Consensual Panel Determination:</b>	Accepted
<b>Facts proved:</b>	All charges
<b>Facts not proved:</b>	N/A
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

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

The panel was informed at the start of this hearing that Miss Powell was not in attendance and that the Notice of Hearing letter had been sent to Miss Powell's registered email address by secure email on 18 January 2024.

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that the Notice of Hearing had been sent to Miss Powell on 18 January 2024, setting a substantive hearing spanning eight days from 28 February 2024 to 8 March 2024. Despite this, a Consensual Panel Determination (CPD) agreement had been mutually arranged and agreed in the interim. He drew attention to the email exchange between Miss Powell and the NMC dated 29 February 2024, where she expressed her agreement for the panel to proceed in her absence at this hearing. Her awareness of today's hearing was noted. Originally intended as a meeting per the CPD agreement's first paragraph, Miss Powell explicitly stated in the email her consent for the panel to proceed with the hearing today as well as in her absence. Mr Malik therefore 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).

In response to panel questions, Mr Malik said that he had not received any information regarding the presence of any witnesses at this hearing today. Nevertheless, he acknowledged that Miss Powell is available between 12:00 and 14:00 should the panel have any questions for her.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Powell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

The panel noted that the Proof of Service was for the initial substantive hearing served on Miss Powell on 18 January 2024. The panel also acknowledged that Miss Powell signed the CPD on 27 February 2024, demonstrating her engagement with the NMC. Notably, the CPD was agreed the day before the original hearing scheduled to begin on 28 February 2024. Additionally, the panel considered the email correspondence between Miss Powell and the NMC, demonstrating her awareness of the hearing and her expressed willingness for the hearing to proceed in her absence. Based on these factors, the panel determined that the Notice of Hearing had been appropriately served, and it did not identify any unfairness or prejudice towards Miss Powell in making this decision.

In the light of all of the information available, the panel was satisfied that Miss Powell has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

### **Decision and reasons on proceeding in the absence of Miss Powell**

The panel next considered whether it should proceed in the absence of Miss Powell. It had regard to Rule 21 and heard the submissions of Mr Malik who invited the panel to continue in the absence of Miss Powell. Mr Malik submitted that the CPD agreement had been finalised and signed by Miss Powell on 27 February 2024. He submitted that an email from Miss Powell expressed that she is content for the hearing to proceed in her absence, with no adjournment request made by her. Mr Malik submitted that Miss Powell is aware of today's hearing and has voluntarily chosen not to attend. However, he assured the panel that Miss Powell remains available for questioning between 12:00 and 14:00 today, should the panel wish to enquire further.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “with the utmost care and caution” as referred to in the case of *R. v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Powell. In reaching this decision, the panel has considered the submissions of Mr Malik, the representations from Miss Powell, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones and General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties.

The panel had regard to the information provided and considered that Miss Powell was aware of today's hearing and that she was content for it to proceed in her absence. She had signed a CPD agreement, intending for the panel to consider this and she was available by telephone should the panel need to seek to clarify any matters. The panel did not consider that adjourning this hearing would secure Miss Powell's attendance at a hearing on a future date nor has Miss Powell requested an adjournment. The panel had regard to the public interest in the expeditious disposal of these proceedings. In these circumstances the panel determined that it would be fair, in the interests of justice and in Miss Powell's interests to proceed in her absence.

### **Details of charge (amended)**

That you, a registered nurse:

- 1) Between March 2018 and March 2019, did not complete Patient A's clinical notes:
  - a. accurately;
  - b. in a timely manner or at all
- 2) On an unknown date in April 2019 in respect of Patient A:
  - a. retrospectively altered the patient's notes from 6 November 2018 to record that their next appointment was on 15 December 2019 which was not correct;

- b. altered the patient's notes from 15 December 2018 to record that you had offered them an appointment on 28 December when you had not done so:
  - c. wrote a retrospective entry in the patient's notes dated 28 December 2018 suggesting that you had offered an appointment to them which they did not attend which was not correct;
  - d. retrospectively altered the patient's notes from 15 January 2019 to record the date of the appointment as 15 December 2018
- 3) Your actions as specified in any or all of charges 2a) – d) were dishonest in that:
- a. you knew that you were tampering with original records;
  - b. you intended any reader of the records to believe that they were original
- 4) When asked in relation to charge 2d) whether you amended Patient A's notes, you incorrectly suggested that Colleague A had inserted the wrong dates in her entry of 15 January 2019
- 5) Your actions as specified in charge 4 were dishonest in that you knew that you had amended the date on the relevant entry
- 6) On an unknown date in April 2019, included Patient A's records, as amended by you, in a Coroner's report which was to be used as evidence in the Inquest into the death of Patient A
- 7) Your actions as specified in charge ~~7~~6 were dishonest in that:
- a. you knew that these were not original records;
  - b. you intended to mislead the Coroner's court

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

## **Consensual Panel Determination**

At the outset of this hearing, Mr Malik informed the panel that a provisional agreement of a CPD had been reached with regard to this case between the NMC and Miss Powell.

The agreement, which was put before the panel, sets out Miss Powell's full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

*The Nursing & Midwifery Council ("the NMC") and Miss Helen Marie Powell ("Miss Powell"), PIN 08G0291W ("the parties") agree as follows:*

- 1. Miss Powell is content for her case to be dealt with by way of a CPD meeting, knowing that she is not required to attend and being content that matters will proceed in her absence. However, Miss Powell will make best efforts to be available by telephone should clarification on any point be required or should the panel wish to make amendments requiring her agreement.*
- 2. Miss Powell understands that if the panel wishes to make amendments to the provisional agreement with which she does not agree, the panel will postpone the matter for the case to be considered at a later hearing.*

### ***The charges***

- 3. Miss Powell admits the following charges:*
- 4. That you, a registered nurse:*

- 1) *Between March 2018 and March 2019, did not complete Patient A's clinical notes:*
  - a. *accurately;*
  - b. *in a timely manner or at all*
- 2) *On an unknown date in April 2019 in respect of Patient A:*
  - a. *retrospectively altered the patient's notes from 6 November 2018 to record that their next appointment was on 15 December 2019 which was not correct;*
  - b. *altered the patient's notes from 15 December 2018 to record that you had offered them an appointment on 28 December when you had not done so:*
  - c. *wrote a retrospective entry in the patient's notes dated 28 December 2018 suggesting that you had offered an appointment to them which they did not attend which was not correct;*
  - d. *retrospectively altered the patient's notes from 15 January 2019 to record the date of the appointment as 15 December 2018*
- 3) *Your actions as specified in any or all of charges 2a) – d) were dishonest in that:*
  - a. *you knew that you were tampering with original records;*
  - b. *you intended any reader of the records to believe that they were original*
- 4) *When asked in relation to charge 2d) whether you amended Patient A's notes, you incorrectly suggested that Colleague A had inserted the wrong dates in her entry of 15 January 2019*

- 5) *Your actions as specified in charge 4 were dishonest in that you knew that you had amended the date on the relevant entry*
- 6) *On an unknown date in April 2019, included Patient A's records, as amended by you, in a Coroner's report which was to be used as evidence in the Inquest into the death of Patient A*
- 7) *Your actions as specified in charge 7 were dishonest in that:*
  - a. *you knew that these were not original records;*
  - b. *you intended to mislead the Coroner's court*

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

### **Background and facts**

5. *Miss Powell appears on the register of nurses, midwives and nursing associates maintained by the NMC as a registered mental health nurse and has been on the NMC register since 13 September 2008.*
6. *Miss Powell was referred to the NMC on 4 September 2020 by [Ms 1], Associate Director Professional Regulation, of Betsi Cadwaladr University Health Board ('BCUHB').*
7. *At the time of the concerns raised in the referral, Miss Powell was working as a nurse within the Substance Misuse Service ('SMS'). She commenced her employment as a band 5 nurse with BCUHB on 30 October 2014 and was promoted to a band 6 nurse on a secondment basis, on 6 March 2017.*
8. *Miss Powell had been the named nurse for Patient A since March 2018. Patient A died on 30 March 2019 and Miss Powell was asked to write an 'Investigation Witness Statement' ('the report') for the Coroner's Inquest, outlining all the input from the SMS, using the information from Patient A's clinical record and diary entries.*



9. [Ms 2], Miss Powell's line manager states that Miss Powell completed the report and it was passed to her on 30 July 2019. The report raised concerns as it was "disjointed" and not "flowing". [Ms 2] stated that "the dates were not quite right, they jumped from year to year and back again" and she also noticed a case note in Patient A's clinical record, which had been written by Miss Powell retrospectively.

10. [Ms 2] stated that she met with Miss Powell that same day to discuss the issue of the retrospective entry and Miss Powell admitted that she had added an entry because the report was not "flowing". Miss Powell acknowledged this was wrong and she agreed to meet up again once [Ms 2] had spoken with her service manager. [Ms 2] subsequently found further irregularities in relation to clinical entries, the report and diary entries. The irregularities were:

"15.12.18 - ...Written in retrospect – addition appointment for 28.12.18 should he require this over Christmas period – Helen Powell CPN

28.12.18 – DNA planned appointment – Helen Powell CPN"

11. When [Ms 2] met with Miss Powell on 31 July 2019, Miss Powell acknowledged that writing in retrospect should occur within three weeks of events happening, as per the BCUHB guidelines. Miss Powell admitted that she had made the entry two days earlier on 29 July 2019 whilst preparing the report, and she accepted that she knew what she had done was wrong. Miss Powell appeared to suggest that she was being "penalised for doing little things wrong". Miss Powell also said that she was [PRIVATE], which might explain some of the errors she had made. A decision was made to remove Miss Powell from clinical duties and place her in a non-clinical role, pending an investigation. However, Miss Powell declined and took a period [PRIVATE].

12. [Ms 2] makes reference to concerns about Miss Powell's general record keeping during the time she was Miss Powell's line manager, from around June 2015 until April 2019. [Ms 2] stated that she had regular supervision meetings with Miss Powell during that time and an

*informal action plan had been put in place. However, Miss Powell's clinical notes were not always accurate and up-to-date and she did not always adhere to the informal action plan.*

- 13. Miss Powell was interviewed on 11 December 2019, as part of BCHUB's disciplinary process. She had been provided with Patient A's clinical notes, which were signed by her as a "correct and factual statement". In respect of the retrospective entry, Miss Powell stated: "I know that I did wrong, I wasn't thinking rationally and I was stressed out...I remembered the details in relation to the appointment after the event and put the entry into the notes when completing the Coroner's report". Miss Powell was not able to explain the alteration of dates, but she said that she may have entered the wrong dates into the clinical records because [PRIVATE].*
- 14. BCHUB concluded that the retrospective entry suggesting that Miss Powell had offered an appointment to Patient A, which they did not attend, was false as no evidence was found of the appointment being offered in the first place. BCHUB also concluded that Miss Powell altered two other dates "to allow a suggestion of clinical activity that did not occur on these dates and that this was done in order to falsify a required Coroner's report."*
- 15. Following the disciplinary hearing held on 29 June and 17 August 2020, Miss Powell was dismissed on the grounds of gross misconduct.*
- 16. Miss Powell has engaged with the NMC process. In previous responses, she accepted that she had altered the notes retrospectively, but provided context for her actions and did not accept that she acted dishonestly. Miss Powell informed the NMC that she has not worked in a nursing capacity since June 2021.*
- 17. In Miss Powell's Case Management Form dated 8 September 2023, she admitted charge 1a but denied all other charges and did not accept that her fitness to practise is impaired.*

18. In an email dated 2 February 2024, Miss Powell informed the NMC that she wished to be considered for a CPD; that she now accepted the charges in full; and agreed that her fitness to practise is impaired.

### **Misconduct**

19. Miss Powell accepts that the conduct as particularised in the admitted charges amounts to misconduct.

20. The comments of **Lord Clyde in Roylance v General Medical Council [1999] UKPC 16** may provide some assistance when considering what could amount to misconduct:

*“[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [nurse] practitioner in the particular circumstances”.*

21. Further assistance may be found in the comments of **Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin)** and **Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin)**:

*“[Misconduct] connotes a serious breach which indicates that the [nurse’s] fitness to practise is impaired”*

*and*

*“The adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners”.*

22. At the relevant time, Miss Powell was subject to the provisions of **The Code: Professional standards of practice and behaviour for**

*nurses and midwives (2015) (“the Code”). The parties agree that the following provisions of the Code were engaged and breached in this case;*

**1 Treat people as individuals and uphold their dignity**

*To achieve this, you must:*

*1.2 make sure you deliver the fundamentals of care effectively*

**3 Make sure that people’s physical, social and psychological needs are assessed and responded to**

*To achieve this, you must:*

*3.3 act in partnership with those receiving care, helping them to access relevant health and social care, information and support when they need it.*

**9 Keep clear and accurate records relevant to your practice**

*This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.*

*To achieve this, you must:*

*10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event*

*10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

*10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

*10.4 attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation*

**20 Uphold the reputation of your profession at all times**

*To achieve this, you must:*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with integrity at all times, treating people fairly and without harassment*

*23. Practising effectively, preserving safety and upholding the nursing profession is a fundamental nursing responsibility and it was the professional duty of Miss Powell to ensure that she acted in a manner that was appropriate for a nursing professional.*

*24. In respect of Patient A, Miss Powell acted inappropriately by altering their medical records on a number of occasions after the patient had passed away, and recording that they had offered Patient A an appointment when they had not. Miss Powell breached the duty of candour by altering the records to cover up failures in her clinical care of Patient A. Furthermore, Miss Powell also dishonestly stated that her colleague had inserted the wrong date in the entry of 15 January 2019. Additionally, Miss Powell amended Patient A's records in a Coroner's report which was to be used as evidence in Patient A's inquest. Miss Powell's actions demonstrate a pattern of sustained dishonest and unprofessional behaviour.*

*25. It is acknowledged that not every breach of the Code will result in a finding of misconduct. However, the parties agree that the misconduct as set out in the charges, both individually and collectively, amounts to serious professional misconduct. The concerns are serious and demonstrate that Miss Powell has been dishonest in order to cover up her clinical failings and suppress the truth. Miss Powell accepts that her conduct caused confusion and was misleading to other healthcare professionals reviewing the records and report, thereby damaging the reputation of nursing and the trust that the public places in the profession. Further, Miss Powell sought to mislead a Coroner's Court by providing false evidence, which is fundamentally dishonest behaviour and further damages the reputation of the nursing profession.*

## ***Impairment***

26. *Miss Powell accepts that her fitness to practise is currently impaired by reason of her misconduct.*

27. *Although there is no statutory definition of “impairment” the parties have considered whether Miss Powell is presently able to practise kindly, safely and professionally, in accordance with the NMC Guidance on impairment<sup>1</sup>. This involves a consideration of both the nature of the concern and the public interest, and it is helpful to have reference to the factors set out by Dame Janet Smith in the **Fifth Shipman Report** and approved by Cox J in the case of **CHRE v Grant & NMC [2011] EWHC 927 (Admin)** (“Grant”).*

*A summary is set out in the case at paragraph 76 in the following terms:*

*Do our findings of fact in respect of the [nurse’s] misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

- i. 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*
  - ii. has in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
  - iii. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the [nursing] profession;*
  - iv. has in the past acted dishonestly and/or is liable to act dishonestly in the future*
-

28. *The parties agree that all 4 limbs are engaged in this case.*

*Limb i*

29. *Although Miss Powell's actions haven't put patients at unwarranted risk of harm, falsifying records could have caused psychological harm and distress to the patient's family. Fortunately, the evidence she had falsified was detected and not in fact sent to the Coroner's court. In the absence of full insight and remediation the risk of repetition and future harm remains.*

*Limbs ii and iii*

30. *Miss Powell's actions have brought the nursing profession into disrepute and she has breached fundamental tenets of the nursing profession by failing to promote professionalism and trust (not keeping to and upholding the standards and values as set out in The Code) and acting in a thoroughly dishonest manner.*

31. *Registered professionals occupy a position of trust in society. The public, quite rightly, expects nurses to provide safe and effective care, and conduct themselves in a way that promotes trust and confidence. The conduct that has been admitted in this case undermines the public's trust and confidence in the profession and could result in patients, and members of the public, being deterred from seeking nursing assistance when needed.*

*Limb iv*

32. *The NMC considers that there is a continuing risk to both public protection and the wider public interest due to Miss Powell's deficient clinical care and dishonesty in this case in falsifying Patient A's records*

*to cover up her failings, which is a difficult element to remediate. Her behaviour raises fundamental concerns about her attitude as a registered professional and Miss Powell has failed to address and put right the issues raised. The behaviour also demonstrates serious breaches of trust and abuse of authority. Further the concerns demonstrate fundamental dishonesty which undermines or completely erodes public trust and confidence in the profession.*

**Remorse, reflection, insight, training and remediation**

33. *With regard to future risk, the parties have considered the comments of **Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin)** namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.*

34. *It is agreed that the failings involved in this case are both clinical and attitudinal. They relate to deficient patient care, dishonest conduct and a breach of the duty of candour, and are therefore more difficult to remediate. The NMC's guidance entitled "**Serious concerns which are more difficult to put right (FTP-3a)**" lists breaching the professional duty of candour to be open and honest when things go wrong as a concern that is so serious that it may be less easy for a nurse, midwife or nursing associate to put right the conduct.*

35. *The NMC's guidance entitled "**Insight and strengthened practice (FTP-13)**" states "Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practice will usually be central to deciding whether their fitness to practise is currently impaired".*

36. *The parties next considered to what extent Miss Powell had reflected upon events and had demonstrated insight into what happened, together with steps taken to remediate the concerns.*



*37. The parties agree that Miss Powell's dishonest record keeping was effected in order to cover up the deficiencies in her care of Patient A. As such, the misconduct is not easily remediable. Breaching the professional duty of candour includes covering up or falsifying records when things go wrong. It is further submitted that the concerns have not been remediated and are therefore highly likely to be repeated should Miss Powell be permitted to practise as a nurse again.*

*38. With regard to insight, Miss Powell did make admissions to changing the records at a local level, although she did not accept that she acted dishonestly and said it was to add something that she had previously omitted. She also provided the NMC with responses in her Case Management Form initially only accepting having completed Patient A's notes inaccurately. There remains a lack of detailed analysis as to why she acted in the way she did, other than Miss Powell stating that [PRIVATE]; however, the overall basis of the charges is that she falsified records to cover up deficiencies in her care and so her [PRIVATE] does not impact upon the misconduct, which is attitudinal in nature. Miss Powell's insight is therefore limited.*

*39. Miss Powell has not worked as a nurse since June 2021 when the concerns were raised and has advised during a case conference in February 2024 that she does not wish to return to nursing in any capacity. This means that Miss Powell will never be in a position to demonstrate remediated behaviour or steps taken towards strengthening her practice.*

#### *Public protection impairment*

*40. A finding of impairment is necessary on public protection grounds as the misconduct in this case is serious and there remains a risk of repetition of the relevant misconduct due to Miss Powell's limited*

*insight and lack of remediation. Miss Powell's care of Patient A was deficient in that she didn't offer them as many appointments as she should have done, which had the potential to cause harm. Further, altering medical records to make it seem as though the care she provided was adequate would have misled the patient's family and the subsequent disclosure of the truth was likely to have caused them emotional and/or psychological distress. Therefore, the risk of unwarranted harm to the public remains, as explained above.*

#### *Public interest impairment*

*41. A finding of impairment is also necessary on public interest grounds.*

*In accordance with **Article 3(4) of the Nursing and Midwifery Order 2001** ("the Order") the overarching objective of the NMC is the protection of the public and **Article 3(4A)** provides:*

*"The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-*

- a) to protect, promote and maintain the health, safety and well-being of the public;*
- b) to promote and maintain public confidence in the professions regulated under this Order; and*
- c) to promote and maintain proper professional standards and conduct for members of those professions."*

*42. The case of **Grant** acknowledges that, in order to protect the public there must be a separate consideration of the wider relevant public interest issues. Cox J stated at para 71:*

*"It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect*

*the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession"*

43. At paragraph 101 of **Grant Cox J** commented that:

*"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case".*

44. Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.

45. It is agreed that a finding of impairment is necessary on public interest grounds in this case. Breaching the professional duty of candour by falsifying Patient A's records in order to cover up deficient clinical care is deplorable and amounts to serious misconduct. The conduct of Miss Powell has brought the nursing profession into disrepute and served to undermine public confidence and trust in the profession.

46. Miss Powell's fitness to practise is impaired on both public protection and public interest grounds.

### **Sanction**

47. The NMC guidance on sanctions (SAN-1) has been considered, assessing each sanction in ascending order of seriousness. It is agreed that the appropriate and proportionate sanction in this case is a striking-off order. The guidance (SAN-1) indicates that before deciding

*on sanction, consideration must be given to a number of factors including the aggravating and mitigating features and proportionality.*

48. *The aggravating features of this case have been identified as follows:*

- a) Pattern of misconduct*
- b) Dishonesty directly related to her clinical practice*
- c) Sustained dishonest conduct which is acknowledged as being difficult, if not impossible to put right (attitudinal concerns)*

49. *The mitigating features of this case have been identified as follows:*

- a) Engaged with the NMC process*
- b) Some remorse shown, although this is more personally focused rather than considering the impact of her actions on Patient A's family and the reputation of the nursing profession*

50. *Considering the sanctions in ascending order of seriousness:*

***No action or a caution order***

51. *The **NMC Sanctions Guidance** ("the Guidance") states that taking no action or imposing a Caution order will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. A risk of harm to patients has been identified in this case and therefore neither of these sanctions would be appropriate. Such sanctions would in any event be inappropriate in terms of marking the seriousness of the misconduct involved.*

***Conditions of Practice Order***

52. *The Guidance (SAN-3c) indicates that a conditions of practice order is appropriate when the concerns can easily be remediated and when workable conditions will be sufficient to protect the public and satisfy*

*the wider public interest concerns. In this case there are clinical concerns relating to deficient clinical care which could be addressed by the imposition of conditions. However, conditions of practice would not be appropriate to address the entirety of the concerns given that the behaviour is as a result of serious attitudinal problems. Miss Powell has displayed a period of sustained dishonest conduct and breached the professional duty of candour by attempting to cover her tracks. Further, Miss Powell has expressed that she no longer wishes to practise as a nurse, so conditions would not be practicable should they be imposed. In any event, conditions will be insufficient to address the seriousness of the concerns.*

### **Suspension order**

*53. The guidance on suspension orders is as follows:*

*54. A suspension order (SAN-3d) “may be appropriate in cases where the misconduct isn’t fundamentally incompatible with the nurse, midwife or nursing associate continuing to be a registered professional, and our overarching objective may be satisfied by a less severe outcome than permanent removal from the register.”*

*55. A non-exhaustive checklist suggests that a suspension may be appropriate where:*

- *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 Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

56. *However, in this case, the concerns raised are serious and highlight a deep-seated attitudinal issue. This was not an isolated, one-off event and Miss Powell's insight is limited, so there remains a risk of repetition. A suspension order is therefore not appropriate as the conduct in this case is incompatible with continued registration.*

### **Striking off order**

57. *The guidance is as follows:*

58. *A striking off order (SAN-3e) is appropriate when what Miss Powell has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:*

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

59. *The concerns in this case do raise fundamental concerns about Miss Powell's professionalism. Further, as the concerns are difficult to address or put right and constitute a serious breach of nursing standards, a striking-off order is the appropriate sanction. Public confidence in the profession could only be maintained by removing Miss Powell from the register.*

### **Referrer's comments**

60. *BCUHB was informed of the parties' intention to submit a draft consensual panel determination to the Fitness to Practise Committee*

*proposing a striking-off order on 22 February 2024. However, at the date of drafting this consensual panel determination, a response has yet to be provided.*

### ***Interim order***

*61. An 18-month interim order is required in this case to cover the eventuality of an appeal by Miss Powell. The substantive order will not come into effect until some 28 days after the hearing and should Miss Powell lodge an appeal within the relevant period, the substantive order would not come into effect pending a resolution of the appeal. This would permit Miss Powell to practise without restriction during this time and would therefore fail to provide protection for the public or take account of public interest considerations. It is agreed that an interim suspension order is required for a period of 18 months because it is likely to take that amount of time for the appeal to be heard.*

*62. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on facts, misconduct, impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel for consideration, provided that it would be relevant and fair to do so.*

Here ends the provisional CPD agreement between the NMC and Miss Powell. The provisional CPD agreement was signed by Miss Powell and the NMC on 27 February 2024.

### **Application to amend charge 7**

The panel identified a typographical error in charge 7, which was not aligned correctly with charge 6 as intended. Consequently, the panel, of its own volition, decided to amend charge 7 to ensure proper numbering consistency.

7) *Your actions as specified in charge ~~7~~ 6 were dishonest in that:*

*a. you knew that these were not original records;*

*b. you intended to mislead the Coroner's court*

Mr Malik raised no objections to the amendment.

Miss Powell was informed by the NMC Case Coordinator of this amendment. She raised no objections.

The panel determined that this correction was solely aimed at rectifying a typographical oversight and had no bearing on the substance of the allegation and therefore making this amendment would not result in any prejudice or unfairness to Miss Powell.

### **Decision and reasons on the CPD**

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. Mr Malik referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Miss Powell. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Powell admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Miss Powell's admissions, as set out in the signed provisional CPD agreement.



## Decision and reasons on impairment

The panel then went on to consider whether Miss Powell's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Powell, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of misconduct, the panel had regard to paragraphs 19 - 25 of the CPD agreement, which it endorsed. The panel was satisfied that paragraph 22 clearly set out Miss Powell's breaches of the *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ("the Code"). The panel noted that the charges are very serious, involving alteration of dates in Patient A's clinical records in order to misrepresent events and to cover up her omissions and failures in her clinical care of Patient A. Records intended for the Coroner's report were altered which were to be used as evidence in Patient A's inquest. The panel noted that Miss Powell attempted to falsely shift some blame on to a colleague. The panel also noted Miss Powell's repeated alteration of records and efforts to evade responsibility demonstrates a pattern of sustained dishonest and unprofessional behaviour. The panel determined that Miss Powell's actions were serious and fell significantly below the standards expected of a registered nurse. It therefore determined that the charges, both individually and collectively, amount to serious professional misconduct.

The panel then considered whether Miss Powell's fitness to practise is currently impaired by reason of misconduct. The panel had regard to paragraphs 26 – 32, which it endorsed. The panel had regard to paragraphs 40 and 41 of the CPD agreement, which clearly sets out that this case engaged public protection and public interest concerns. In respect of public protection, the panel considered that Miss Powell's management and recording of Patient A's care fell significantly short and had the potential to cause harm. In addition, falsifying records to create the illusion of care provided and offered would have misled Patient A's family and the disclosure of the truth had the potential to cause emotional and psychological distress to Patient A's family members. In respect of public interest, the panel determined that Miss

Powell's actions brought the nursing profession into disrepute and served to undermine public confidence in the nursing profession.

The panel accepted that limbs a, b, c and d of Dame Janet Smith's test, as set out in the case of *CHRE v NMC and Grant* [2011] EWHC 927, were engaged by Miss Powell's past actions, as set out in paragraphs 27 – 32 of the CPD agreement. The panel went on to consider whether Miss Powell was liable to put patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future. In doing so, the panel assessed Miss Powell's levels of insight, remorse and remediation.

The panel determined that dishonesty was the key element of the misconduct in this case. It noted that dishonesty is often difficult to remediate, and in particular it had regard to the fact that the dishonesty occurred over a lengthy period of time.

The panel noted that Miss Powell, while eventually admitting to the charges, provided limited insight into the underlying reasons for her actions, merely attributing them to [PRIVATE] which the panel did not accept. Despite showing some remorse, her expressions were more of a personal nature. Additionally, Miss Powell has not practised as a nurse since 2021 and has stated that she does not wish to return to nursing in any capacity. Consequently, the panel lacks evidence of any remediation or measures taken by Miss Powell to address and strengthen her practice.

### **Decision and reasons on sanction**

Having found Miss Powell's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel 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 careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Premeditated and sustained dishonesty.
- Apportioning blame to a colleague.
- Dishonesty directly related to Miss Powell's clinical practice and record-keeping.
- Falsified records submitted to the Coroner's inquest.
- Lack of insight into failings, particularly the dishonesty.

The panel also took into account the following mitigating feature:

- Miss Powell made admissions to all the charges, albeit at a late stage of the proceedings.

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 Miss Powell'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 Miss Powell's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the risk of repetition. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Powell's registration would be a sufficient and appropriate response. The panel noted that the misconduct involves dishonesty, and therefore was not something which, in the panel's view, could be addressed through conditions of practice. The panel considered that there are no practical or workable conditions that could be formulated to address this particular misconduct and that Miss Powell has made it

clear that she does not wish to return to nursing practice. Furthermore, it considered that a conditions of practice order would be insufficient to address the public interest, having regard to the seriousness of the dishonesty in this case. In this regard, the panel endorsed paragraph 52 of the CPD agreement.

The panel then went on to consider 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...
- ...

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Powell's actions is fundamentally incompatible with Miss Powell remaining on the register. The panel noted that the concerns raised are serious and highlight a deep-seated attitudinal issue. It therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. In this regard, the panel endorsed paragraphs 53 - 56 of the CPD agreement.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*

- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Miss Powell's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Powell's misconduct was premeditated, serious and sustained and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Powell's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was 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.

### **Decision and reasons on interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Powell's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel endorsed paragraphs 61 – 62 of the CPD agreement. It decided to impose an interim suspension order on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the misconduct and the reasons set out in its decision to impose a substantive striking-off order. To not impose an interim order would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined. If no appeal is made, then the interim suspension order will be replaced by the striking-off order 28 days after Miss Powell is sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to Miss Powell in writing.