

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Order Review Hearing**  
**1 October 2019**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

<b>Name of registrant:</b>	Iain David Duncan Scott
<b>NMC PIN:</b>	85Y0324S
<b>Part(s) of the register:</b>	Registered Nurse (Sub Part 1) Adult Nursing – February 1990
<b>Area of Registered Address:</b>	Scotland
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Wendy Yeadon (Chair, Lay member) Claire Matthews (Registrant member) Geoffrey Baines (Lay member)
<b>Legal Assessor:</b>	Marian Gilmore QC
<b>Panel Secretary:</b>	Caroline Pringle
<b>Mr Scott:</b>	Not present and not represented in his absence
<b>Nursing and Midwifery Council:</b>	Represented by Samantha Forsyth, Case Presenter
<b>Order being reviewed:</b>	Conditions of practice order (12 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Suspension order (12 months) to come into effect at the end of 27 November 2019 in accordance with Article 30(1)

### **Service of notice of hearing**

The panel was informed at the start of this hearing that Mr Scott was not in attendance, nor was he represented in his absence.

The panel was informed that the notice of this hearing was sent to Mr Scott on 29 August 2019 by recorded delivery and first class post to his registered address. Royal Mail 'Track and Trace' documentation confirmed that the notice of this hearing was collected from St Andrew's delivery office on 6 September 2019 and signed for in the name of 'SCOTT'.

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

### **Proceeding in absence**

The panel then considered proceeding in the absence of Mr Scott. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms Forsyth, on behalf of the Nursing and Midwifery Council (NMC). The panel accepted the advice of the legal assessor.

Ms Forsyth submitted that Mr Scott had voluntarily absented himself and invited the panel to proceed in his absence. She submitted that Mr Scott had received the notice of this hearing and should therefore be aware of today's hearing. Further, she referred the panel to a bundle of correspondence which demonstrated the efforts made by the NMC to contact Mr Scott regarding this hearing. These included two emails sent to him on 9 and 30 September 2019, enquiring about his attendance at this hearing. Telephone

calls were also made to his home and mobile numbers on 26 September 2019 and a voicemail message was left on his mobile, asking him to contact the NMC regarding this hearing. However, no response was received from Mr Scott to either the telephone calls or emails.

The panel decided to proceed in the absence of Mr Scott. He had been sent notice of today's hearing and the panel was satisfied that he was or should be aware of today's hearing. Despite this, there has been no response to the notice, nor to the proactive attempts made by the NMC to contact him. The panel therefore concluded that Mr Scott has chosen to disengage and voluntarily absent himself. The panel had no reason to believe that an adjournment would result in Mr Scott's attendance. Having weighed the interests of Mr Scott with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Mr Scott's absence.

#### **Decision and reasons on review of the current order**

The panel decided to make a 12 month suspension order. This order will come into effect at the end of 27 November 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a conditions of practice order, originally imposed by a Fitness to Practise panel on 29 October 2018 for 12 months. The current order is due to expire at the end of 27 November 2019.

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 employed as a Band 5 Staff nurse at Victoria Hospital NHS Fife:*

1. *On an unknown date in September 2014:*

- (a) touched and/or patted Colleague B's buttock*
- (b) ...*

2. *In relation to Colleague A, between 20 March and 09 September 2015, on one or more occasion, said Colleague A:*

- (a) had a manly voice*
- (b) had a swagger like a man and/or swaggered like a man*
- (c) ...*
- (d) ...*

3. *In relation to Colleague A, between 20 March and 09 September 2015, on one or more occasion, said:*

- (a) my name is Neill and I used to be a man*
- (b) you must have been a man with that kind of swagger*

4. ...

5. ...

6. *[Found proved but did not amount to misconduct]*

7. *In relation to Colleague A, on or about the 20 January 2017:*

- (a) put your gloved hand down the back of Colleague A's trousers*
- (b) put your gloved hand and/or finger between Colleague A's sacral cheeks (buttocks)*
- (c) said words to the effect of:*
  - i. you've got a builders bum*

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

The substantive panel determined the following with regard to impairment:

*When considering future risk the panel noted your previous good character, your admissions, your apology to Colleague B at the time, and your apology to Colleague A during the course of the hearing. It was mindful that the concerns could be said to be isolated to one individual, albeit over an extended period of time. The panel also had no doubt that you have learned a very hard lesson regardless of whether the remorse you have shown is for Colleague A's perception of events, or the effect on you of the criminal, disciplinary and regulatory proceedings. It is clear that this case will have a lasting impact on your behaviour in the future. The panel also took cognisance of the judgements of Amoa and Yusuff in relation to those charges you have denied, but that the panel has found proved.*

*However, although you may have learned a salutary lesson by these proceedings, you have failed to show the panel that you have a comprehensive understanding of how you present to other people. It formed the view that you have demonstrated a number of gaps in your insight. It noted that you repeatedly stated you did not know the effect of your behaviour on Colleague A. The panel is concerned that you did not know at the time that your behaviour was clearly belittling and insensitive to your colleagues. It had to be made explicit to you before an apology was forthcoming to Colleague B. Colleague A was less explicit and your behaviour toward her continued for a number of years. Further, you were formally warned about the incident at 1a and three years later, you once again, inappropriately touched Colleague A. The panel is disappointed that your most recent reflective piece, produced after Colleague A's diary was adduced and the facts have been announced, only addresses your understanding of infection control. Your statement and reflective pieces do not demonstrate an understanding of power imbalance, bullying and/or harassment in the workplace. There is no indication of how you are going to 'team build' any differently in the future or how you would more appropriately manage workplace relationships with junior staff.*

*Because of the gaps in your understanding of why you behaved in the way you did, how it impacted on others and how you will prevent it happening again, and the lack of evidence of remediation in practice, the panel has not been sufficiently persuaded that you are highly unlikely to repeat your conduct.*

*The panel is therefore of the view that there is a risk of repetition. The panel took account of the impact of your previous behaviour on colleagues and the potential impact on team working when delivering care. It concluded 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 reflected on the seriousness of this case and determined that a finding of impairment was also required on public interest grounds, in that a failure to find current impairment would fail to uphold and declare proper standards and would undermine public confidence in the nursing profession.*

*Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.*

The substantive panel determined the following with regard to sanction:

*The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel has identified a risk of repetition and decided that it would be neither proportionate nor in the public interest to take no further action.*

*Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 was satisfied that your misconduct was not at the lower end of the spectrum and has identified a risk of repetition. It therefore determined that a caution order would be inappropriate and neither proportionate nor in the public interest.*

*The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.*

*The panel was mindful that although conditions of practice typically address clinical failings, such as record keeping, it was satisfied that this did not mean that conditions of practice could not be appropriate where concerns were relevant to workplace relationships and leadership, so long as they were sufficiently protective of the public and met the public interest.*

*The panel carefully considered the three reflective pieces you have produced. The panel noted that the latter two are reactive and arise from the panel findings during the course of the hearing. It was clear to the panel that you are doing your utmost to persuade it that there will be no repetition of your wholly inappropriate behaviour in the future. In the panel’s view there is the potential that your behaviour was related to a long-term attitudinal issue. However, the panel considered that you have genuine and developing insight during the course of these proceedings and placed weight on your willingness to see things from Colleague A’s perspective and make attempts to remediate. Having accepted your genuine desire to address your failings, the panel considered the*

*potential of any early repetition to be unlikely. However, it equally considered that there is a need to ensure that any lessons you say you have learned during this process are entrenched in your future practice.*

*Although your behaviour could be described as adverse personality issues over a period of time, the insight you have developed during the process of this hearing and in particular your action plan has satisfied the panel that you do not currently demonstrate a deep-seated personality or attitudinal issue. Having accepted that your past behaviour has been unacceptable and the nature and extent of its consequences on your colleagues, you have persuaded the panel that you are capable of addressing these issues. However, more requires to be done to demonstrate that the lessons you have learned have been properly embedded. The panel is therefore satisfied that there is the potential for appropriate remediation to be facilitated by way of robust conditions of practice.*

*In these particular circumstances the panel determined that conditions requiring monitoring, a personal development plan and appropriate training will be sufficient to minimise the risk of repetition and thereby protect patients and colleagues and, as a consequence, satisfy the wider public interest in this case.*

*Taking all of the above into account the panel determined that it would be possible to formulate appropriate and practical conditions, which would address the failings highlighted in this case.*

*Balancing all of these factors and after having taken into account both the aggravating and mitigating features of this case, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.*



*The panel determined that the following conditions are appropriate and proportionate in this case:*

- 1. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan designed to address the concerns about the following areas of your practice:
    - a. effective communication with colleagues;*
    - b. leadership and team working;*
    - c. maintenance of professional boundaries;*
    - d. management of workplace conflict;*
    - e. awareness of respect for equality and diversity and individual rights.**
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- 2. You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your performance and your progress towards achieving the aims set out in your personal development plan.*
  
  - 3. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which these conditions become effective or the date on which you take up an appointment as a nurse, whichever is later.*
  
  - 4. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to the NMC every four months and at least 14 days before any NMC review hearing or meeting.*
  
  - 5. Within six months of the commencement of this order you must attend an accredited participatory course that addresses effective*

*communication in the workplace and provide documentary evidence of this to the NMC within 14 days of completion of the course.*

- 6. You must provide a reflective piece to the reviewing panel, using a reflective practice model of your choice to identify what you have taken from the concerns identified throughout this regulatory process and how your practice has developed since the order was imposed. This must be sent to the NMC at least 14 days before any review.*
- 7. You must tell the NMC within 7 days of any nursing appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*
- 8. You must immediately tell the NMC about any professional investigation started against you and/or any professional disciplinary proceedings taken against you.*
- 9. a) You must within 7 days of accepting any post of employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*  
  
*b) You must within 7 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.*
- 10. You must immediately tell the following parties that you are subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions listed at (1) to (9) above, to them*

- a. *Any organisation or person employing, contracting with or using you to undertake nursing work*
- b. *Any agency you are registered with or apply to be registered with (at the time of application) to provide nursing services*
- c. *Any prospective employer (at the time of application) where you are applying for any nursing appointment*
- d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take a course (at the time of application).*

*Having identified conditions of practice which are suitable to protect patients and meet the public interest, the panel was of the view that to impose a suspension order or a striking off order would be disproportionate and overly punitive. In reaching this decision the panel did note the NMC's sanction bid. However, the public will be adequately protected by a conditions of practice order and therefore anything more restrictive would act against the public interest by depriving patients of the care of an otherwise good nurse who is willing to remediate his failings.*

*The period of this order is for 12 months. The panel determined that 12 months was the minimum period that would enable you to achieve and demonstrate that you have successfully addressed the shortcomings that are currently impairing your fitness to practise. The panel considered that 12 months would allow a sufficient number of management reports to be available for a reviewing panel to assess the quality of your personal development since the order came into effect. As the management reports are required every four months, you must ensure that the third report is available at least 14 days before the review, even though four months may not have elapsed since the second report.*

*Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.*

*Any future panel reviewing this case would be assisted by*

- *Testimonials from colleagues, including junior colleagues, addressing your team work and leadership*

### **Decision on current fitness to practise**

The panel today considered whether Mr Scott's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined it as a registrant's suitability to remain on the register without restriction. In considering this case, the panel carried out a comprehensive review of the order in light of the current circumstances. It noted the decision of the last panel. However, it exercised its own judgment as to current impairment.

The panel had regard to all of the documentation before it and took account of the submissions made by Ms Forsyth on behalf of the NMC.

Ms Forsyth outlined the background of the case. She drew the panel's attention to the reasons of the substantive panel for imposing a conditions of practice order. These included that the panel felt that Mr Scott had developed insight during the course of proceedings and demonstrated a genuine desire to address his failings and that the panel was satisfied that any risk of repetition was unlikely.

Ms Forsyth updated the panel in relation to developments since the last hearing. On 5 November 2019 Mr Scott commenced employment with Abbotsford Care Ltd. On 21 December 2018 the NMC was informed that Mr Scott had been suspended by Abbotsford Care. Mr Scott resigned from Abbotsford Care in January 2019, at which

point his employer made a referral to the NMC. Since 8 February 2019 Mr Scott has been subject to an interim suspension order in relation to this new referral. Ms Forsyth informed the panel that the new referral also relates to inappropriate behaviour towards colleagues and is currently being investigated by the NMC. However, she stressed that these allegations are unproven at this stage and so warned the panel against attaching any weight to this.

As a result of this interim suspension order, Ms Forsyth submitted that Mr Scott has been unable to demonstrate compliance with the conditions of practice. In these circumstances, Ms Forsyth submitted that Mr Scott's fitness to practise remains impaired. She also invited the panel to consider whether conditions of practice remained workable and proportionate, or whether a suspension order would be more appropriate in light of Mr Scott's disengagement.

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 Scott's fitness to practise remains impaired.

The panel noted that the only new information it had from Mr Scott, as regards insight or remediation, was a copy of a personal development plan (PDP) agreed with his manager at Abbotsford Care Home at the beginning of December 2018. However, this PDP was clearly in its early stages and included no evidence that Mr Scott had achieved or was progressing towards the targets set out in the plan. The panel noted that Mr Scott has been subject to an interim suspension order since 8 February 2019 and therefore has not been able to work as a registered nurse. The panel accepted that this will have impacted on Mr Scott's ability to comply fully with the conditions of practice. However, it noted that some of the conditions, such as the training required by condition 7 or the reflective piece required by condition 8, did not necessarily require Mr Scott to be working as a registered nurse in order to complete these. Despite this, there

has been no recent engagement from Mr Scott, no evidence of compliance with any of the conditions, and no information about steps that he is taking to remediate the concerns relating to his practice or to further develop his insight.

The substantive panel was of the view that Mr Scott had *'failed to show...a comprehensive understanding of how [he] present[s] to other people'* and *'demonstrated a number of gaps'* in his insight. It also identified an ongoing risk of repetition. This panel had no new information from Mr Scott to suggest that his insight has developed any further or that the risk of repetition has reduced.

For these reasons, the panel concluded that there remains a risk of repetition and therefore a finding of current impairment on public protection grounds remains necessary.

The panel also bore in mind that its primary function was 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 agreed with the decision of the substantive panel that, due to the serious nature of this case, a finding of current impairment on public interest grounds was necessary to uphold proper standards and public confidence in the nursing profession.

For these reasons, the panel finds that Mr Scott's fitness to practise remains impaired.

### **Determination on sanction**

Having found Mr Scott's 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 29 of the Order. The panel also took into account the NMC's Sanctions Guidance and bore 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 risk of repetition identified and seriousness of the case. The

panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution order but concluded that this would also be inappropriate for the same reasons, and would not place any restriction on Mr Scott's ability to practise.

The panel next considered the continuation of the conditions of practice order. The panel noted that Mr Scott is currently subject to an interim suspension order and appears to have disengaged from these proceedings. It had no information, with the exception of an agreed PDP which was provided to the NMC last December, of any efforts Mr Scott has made to comply with the conditions of practice order, remediate his conduct, or develop his insight. For these reasons, the panel concluded that a conditions of practice order is no longer practicable, workable or proportionate. The panel concluded that no workable conditions of practice could be formulated which would protect the public or satisfy the wider public interest.

The panel therefore moved on to consider a suspension order. It noted that a suspension order would protect the public for the time it was in force, mark the seriousness of Mr Scott's misconduct and subsequent lack of engagement, and give him an opportunity to re-engage if he wishes.

The panel gave serious consideration to a striking-off order, noting in particular the seriousness of the concerns, Mr Scott's potential and repetitive attitudinal problem, and his apparent disengagement. However, it decided that it would be disproportionate at this stage to move to a striking-off order.

The panel therefore concluded that a suspension order is the appropriate and proportionate sanction that would both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 12 months. It considered this length of time was necessary to mark the seriousness of Mr Scott's misconduct and to give him adequate opportunity to reflect and remediate. This suspension order will take effect upon the expiry of the current conditions of

practice order, namely at the end of 27 November 2019 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001.

This decision will be confirmed to Mr Scott in writing.

That concludes this determination.