

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

**Substantive Meeting
Wednesday, 9 August 2023**

Virtual Meeting

Name of Registrant: Samuel Owen Strickland

NMC PIN 19H2063E

Part(s) of the register: Registered Nurse – Sub part 1
Mental Health Nurse – 7 November 2019

Relevant Location: Lancashire

Type of case: Conviction

Panel members: Patricia Richardson (Chair, Lay member)
Jonathan Coombes (Registrant member)
Paul Leighton (Lay member)

Legal Assessor: Nigel Pascoe KC

Hearings Coordinator: Stanley Udealor

Facts proved: Charge 1

Facts not proved: N/A

Fitness to practise: Impaired

Sanction: **Caution order (3 years)**

Interim order: N/A

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mr Strickland's registered email address by secure email on 4 July 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, and that the meeting was to be held virtually.

In the light of all of the information available, the panel was satisfied that Mr Strickland 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).

Details of charge

That you, a registered nurse:

- 1) *On 10 March 2022 at Blackpool Magistrates Court, were convicted of driving a motor vehicle on a road after consuming so much alcohol that the proportion of it in your breath, namely 123 microgrammes of alcohol in 100 millilitres of breath exceeded the prescribed limit, contrary to section 5 of the Road Traffic Act 1988.*

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

Background

Mr Strickland made a self-referral to the Nursing and Midwifery Council (NMC) on 22 January 2022. The referral related to an incident occurring on the 15 January 2022. In the early hours of the morning, Mr Strickland was stopped by the police whilst driving under the influence of alcohol (with a reading of 123 micrograms in 100 millilitres of breath –

more than 3.5 times over the legal limit). The police evidence states that the initial report suggests that the vehicle being driven by Mr Strickland was swerving all over the road and initially failed to stop for the police before being brought to a stop using a police stinger.

On 10 March 2022, Mr Strickland appeared before Blackpool Magistrates' Court where he pleaded guilty to one offence of excess alcohol and was sentenced to an eight-week custodial sentence suspended for twelve months. Mr Strickland was ordered to comply with a rehabilitation activity requirement within the twelve-month supervision period and pay a victim surcharge of one hundred and twenty-eight pounds as well as prosecution costs of eighty-five pounds. Mr Strickland was further disqualified from driving for three years.

Decision and reasons on facts

The charge concerns Mr Strickland's conviction and having been provided with a copy of the Memorandum of Conviction dated 10 March 2022, the panel finds that charge 1 proved.

The panel also noted the Self-referral dated 22 January 2022 and the Completed Case Management Form dated 6 June 2023 and that Mr Strickland has made full admissions to charge 1.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Strickland's fitness to practise is currently impaired by reason of his conviction. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel accepted the advice of the legal assessor.

Representations on impairment

In its written representations, the NMC submitted that:

7. *'At the relevant time, Mr Strickland was subject to the provisions of The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ('the Code'). It is submitted that the following provisions of the Code have been breached:*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.4 keep to the laws of the country in which you are practising

Impairment

8. *The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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?"

9. *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*
10. *Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*
11. *When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and*

Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- a. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- b. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- c. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- d. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

12. It is the submission of the NMC that b and c can be answered in the affirmative in this case. In receiving a conviction for driving under the influence, and the factual matrix including allegations of refusing to stop for police, Mr Strickland brought the nursing profession into disrepute, and breached fundamental tenets of the profession by risking harm to the public and failing to promote public confidence in the profession.

13. Impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

14. We consider the registrant has displayed considerable insight throughout his selfreferral, showing remorse for his actions. He recognises that it was irresponsible and the potential danger to himself and others. He states that he continues to attend local meetings on alcohol misuse as well as self-referring to occupational health for assistance, a referral that he made on 30 January 2022. Mr Strickland currently working as a deputy ward manager and has returned to full clinical duties.

15. *In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

“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.”

16. *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.*

17. *In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

18. *However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

19. *We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior owing to the nature of the criminal conviction in this case and Mr Strickland's conduct leading to his arrest.'*

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mr Strickland's fitness to practise is currently impaired.

Registered nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that limbs b and c of the Grant test are engaged in this case. It decided that Mr Strickland's actions in driving under the influence of alcohol and his subsequent conviction, brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession, relating to upholding the reputation of the nursing profession.

The panel was of the view that Mr Strickland's actions amounted to a breach of the Code. Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.4 keep to the laws of the country in which you are practising'

Regarding insight, the panel accepted the written representations of the NMC that Mr Strickland has shown considerable insight into his actions. It took into account Mr Strickland's reflective account dated 30 October 2022 and his further reflective statement dated 6 June 2023. The panel noted that Mr Strickland had demonstrated genuine remorse and insight into his failings including the impact of his actions on his colleagues, the nursing profession and the general public. The panel took into consideration that Mr Strickland had made full admissions from the outset through a self-referral to the NMC, apologised for his actions and had provided detailed steps he would take to prevent such situation from occurring in the future.

The panel noted that Mr Strickland had stated that he has been attending local meetings on alcohol misuse and had self-referred himself to occupational health services for assistance on 30 January 2022. It further noted that Mr Strickland is currently working as a

deputy ward manager at Lancashire and South Cumbria NHS Foundation Trust and had been practising as a registered nurse without restrictions since the incidents with no further concerns raised about his nursing practice.

The panel had regard to the NMC Guidance on Impairment especially the question which states:

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

The panel was of the view that Mr Strickland had made considerable progress in addressing the concerns in this case and that there is a low risk of repetition in this case. In light of this, this panel determined that Mr Strickland does not pose a risk of harm to the public and that a finding of impairment is not necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. 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 had regard to the serious nature of Mr Strickland's actions and his conviction and determined that public confidence in the profession would be undermined if a finding of impairment were not made in this case. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Mr Strickland were permitted to practise as a registered nurse without restrictions. For this reason, the panel determined that a finding of current impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Mr Strickland's fitness to practise is currently impaired on public interest grounds.

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of three years. The effect of this order is that Mr Strickland's name on the NMC register will show that he is subject to a caution order and anyone who enquires about his registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel took into account the NMC's written representations on sanction, which stated:

'.....

Sanction

20. *We consider the most appropriate and proportionate sanction to be a caution order for a period of 3 years.*
21. *This case is not suitable for taking no action. It involves a criminal conviction for drink driving which lead to a suspended custodial sentence being imposed and involved aggravating circumstances connected to the offence namely an extremely high reading and evidence of bad driving.*
22. *In line with the NMC guidance, this is a serious concern which requires action to be taken on the basis it calls into question the basics of Mr Strickland's professionalism and is necessary to uphold public confidence in the profession. However, the conviction is not related to Mr Strickland's clinical practice. As such, requiring his practice to be restricted (with conditions) would not be appropriate or proportionate.*
23. *The guidance in respect of a caution order states the following:*

A caution order is only appropriate if the Fitness to Practise Committee has decided there's no risk to the public or to patients requiring the nurse, midwife or nursing associate's practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.

Because a caution order doesn't affect a nurse, midwife or nursing associate's right to practise, the Committee will always need to ask itself if its decision about the nurse, midwife or nursing associate's fitness to practise indicated any risk to patient safety.'

- 24. The conviction occurred in Mr Strickland's private life. Although there is evidence of bad driving and a particularly high reading which arguably put the public at risk, this is not a case in which Mr Strickland's fitness to practice indicated a risk to patient safety.*
- 25. Mr Strickland alerted the NMC to the conviction, made early admissions, and showed insight into what led to his behaviour that night. Because of his insight, Mr Strickland made a self-referral to occupational health and while he initially had regular supervision meetings with his manager, we are told he has returned to full clinical duties as a Deputy Ward Manager which suggests the steps taken by SS and the support have assisted.*
- 26. The guidance at SAN-2 of the fitness to practice library in relation to the issue of considering sanctions in serious cases involving criminal convictions states while the purpose of the sentence in the criminal court is to punish people for offending.*

'In contrast the purpose of the fitness to practise committee when deciding sanction in a case about criminal offending is to achieve our overarching objective of public protection. When doing so, the Committee will think about promoting and maintaining the health, safety and wellbeing of the public, public confidence in nurses, midwives and nursing associates, and professional standards.

It's clear that the Committee's purpose isn't to punish the nurse, midwife, or nursing associate for a second time.'

27. *While the conviction is serious and does call into question Mr Strickland's fitness to practise, it is submitted that a suspension order would serve to punish Mr Strickland. Temporary removal from the register is not appropriate having regard to the following issues*

- a. *It was a single incident of misconduct*
- b. *There has been no repetition of the behaviour since*
- c. *The 12-month suspended sentence appears to have come to an end*
- d. *Mr Strickland has shown sufficient insight and made early admissions*

28. *In the circumstances, it is submitted that the lesser sanction of a caution order is a proportionate sanction and would still meet the NMC's overarching objective of public protection.'*

Decision and reasons on sanction

Having found Mr Strickland'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:

- An extremely high reading of blood alcohol whilst driving
- Bad driving

The panel also took into account the following mitigating features:

- The concerns are not related to Mr Strickland's clinical practice.
- No risk to patients' safety.
- Mr Strickland's genuine remorse and apology for his actions.
- Mr Strickland's considerable insight into his actions.
- Mr Strickland's early and consistent admission of his actions.
- No repetition of the incident.
- Mr Strickland has practised without restrictions as a registered nurse since the incident without further concerns

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.

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 took into account that Mr Strickland had reflected on the incidents and shown considerable insight into his actions. It noted that Mr Strickland had made full admissions, apologised for his actions and demonstrated evidence of genuine remorse. The panel also considered that Mr Strickland is currently working as a deputy ward manager at Lancashire and South Cumbria NHS Foundation Trust and had been practising as a registered nurse since the incident with no further concerns.

The panel was satisfied that Mr Strickland's actions were sufficiently serious and he has brought the nursing profession into disrepute. However, in the panel's judgement, this is a case which is at the lower end of the spectrum of impaired fitness to practise.

The panel considered whether it would be proportionate to impose a conditions of practice order. The panel noted that the concerns did not relate to Mr Strickland's clinical practice and that he has been practising as a registered nurse without any concerns raised about his nursing practice. The panel therefore concluded that no useful purpose would be

served by a conditions of practice order and it would not serve the public interest considerations in this case.

The panel agreed with the written representations of the NMC that a suspension order would not be appropriate in the circumstances of this case.

The panel has decided that a caution order would be adequate to maintain public confidence in the profession and uphold the standards required of a registered nurse. For the next three years, Mr Strickland's employer - or any prospective employer - will be on notice that his fitness to practise had been found to be impaired and that his practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of three years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse

At the end of this period the note on Mr Strickland's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that his fitness to practise had been found impaired. If the NMC receives a further allegation that Mr Strickland's fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This will be confirmed to Mr Strickland in writing.

That concludes this determination.