

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

**Substantive Meeting
Friday, 26 July 2024**

Virtual Meeting

Name of Registrant: Emma Louise Clarke

NMC PIN 11D1034E

Part(s) of the register: Registered Nurse: sub part 1
Adult Nursing (level 1) – 17 September 2011

Relevant Location: Wales

Type of case: Conviction

Panel members: Denford Chifamba (Chair, registrant member)
Clare Taggart (Lay member)
Robert Fish (Lay member)

Legal Assessor: Nina Ellin KC

Hearings Coordinator: Catherine Blake

Facts proved: Charge 1 (in its entirety)

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

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 Miss Clarke's registered address by recorded delivery and by first class post on 20 June 2024, and to her registered email address by secure email on 19 June 2024.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and that this meeting would be heard virtually.

In the light of all of the information available, the panel was satisfied that Miss Clarke 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).

The panel noted that the Rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Details of charge

That you, a registered nurse:

1. On 10 May 2023 and 11 July 2023 were convicted of:
 - a. Drive a motor vehicle dangerously.
 - b. Fail to provide specimen for analysis – vehicle driver.
 - c. Failed to surrender to police/court bail at the appointed time.
 - d. Possess a controlled drug of Class A – Cocaine

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

Background

Miss Clarke is a Registered Adult Nurse, who qualified and entered the Nursing and Midwifery Council's (NMC) register of nurses, midwives, and nursing associates on 17 September 2011.

On 14 November 2022 North Wales Police received a report that Miss Clarke had reversed into the driveway of an elderly resident and was behaving suspiciously. Officers attended in two cars. PC 1, a female officer, approached Miss Clarke first. PC 1 was in the company of a male officer who stood back. PC 2 instructed Miss Clarke to get out of the car. Miss Clarke refused, saying no. PC 1 then placed her arm through the driver's window to remove the car keys to prevent Miss Clarke driving away. At that point, at approximately 23.45 hours, Miss Clarke drove off at speed, even though PC 1's arm was still in the car. PC 1 managed to free her arm from the car.

Miss Clarke then narrowly missed hitting another officer, Sergeant A, who was close enough to strike Miss Clarke's windscreen with his baton to get her to stop. Miss Clarke drove over a neighbour's garden, and there was then a lengthy police chase involving several vehicles. At times, police officers were forced to drive at speeds in excess of 94 miles an hour on a 60 mile an hour road. At times, there was a police chase through built up areas.

Miss Clarke eventually went down a dead-end street and was unable to go any further. The police found cocaine in her vehicle. Miss Clarke told the police it was not hers. A roadside test showed that Miss Clarke was positive for having ingested cocaine. Miss Clarke was arrested and at the police station she refused to provide a sample of blood which would have enabled the police to ascertain the level of cocaine in her body following the positive roadside swipe.

On 10 May 2023 and 11 July 2023 Miss Clarke was, upon her own confession, convicted on indictment at Mold Crown Court for the offences set out in the Charge.

On 31 August 2023 Miss Clarke was sentenced to 16-months imprisonment. She was ordered to serve half her sentence in custody and the remainder on licence. She was also

disqualified from holding or obtaining a driving license for 2 years and 8 months and ordered to pay a victim surcharge of £187.

On the same date as sentencing the NMC received a referral from InHealth Ltd ('the Employer') concerning Miss Clarke. Miss Clarke had worked for the Employer since 10 January 2022 as an Endoscopy Lead. The Employer had no concerns over her work. [PRIVATE].

[PRIVATE].

Following an HR meeting with Miss Clarke on 25 May 2023, Miss Clarke was off work between 30 May 2023 and 2 June 2023. She was due to return to work on 5 June 2023 but failed to do so. The Employer had no contact from Miss Clarke after that despite further attempts to contact her.

[PRIVATE].

On receipt of the referral the NMC located a newspaper article online which set out that Miss Clarke had pleaded guilty to the criminal charges and received a custodial sentence. The NMC was previously unaware that Miss Clarke was subject to criminal proceedings.

Miss Clarke was released from HMP Drake Hall back into the community on 2 January 2024.

Decision and reasons on facts

The charges concern Miss Clarke's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom*

- (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Miss Clarke's fitness to practise is currently impaired by reason of Miss Clarke's 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.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC referred to the case of *Grant* in written submissions and submitted that the first three limbs are engaged in this case. The NMC submitted that, while the conduct underpinning Miss Clarke's conviction occurred in her private life, as a nurse she had a duty to consistently display a personal commitment to the standards of practice and behaviour set out in the Code and to act as a model of integrity for others to aspire to, even in private.

The NMC submitted that the seriousness of her conviction calls into question Miss Clarke's professionalism in the workplace. Members of the public would be extremely concerned to

hear that a nurse convicted of these offences were allowed to practise without restriction. They consequently may be deterred from seeking medical assistance when required, thus placing them at risk of harm. Miss Clarke also placed members of the public and the police at risk of harm by leading police officers on a lengthy high-speed chase in an attempt to evade capture.

The NMC submitted that there has been a lack of insight and engagement from Miss Clarke. The NMC submitted that there is a continued risk to the public due to Miss Clarke's lack of insight, lack of remediation, and the ensuing risk of repetition. It submitted that a finding of impairment was necessary to protect the public.

The NMC further submitted that in receiving convictions for driving under the influence of a Class A drug, being in possession of a Class A drug, and failing to cooperate with police, Miss Clarke brought the nursing profession into disrepute and breached fundamental tenets of integrity and upholding and promoting public confidence in the profession. Accordingly, the NMC submitted that a finding of impairment was also in the public interest.

The panel heard and accepted the advice of the legal assessor.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 February 2024, which states:

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

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

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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*

...'

The panel finds that, while patients were not put at risk of harm as a result of Miss Clarke's conduct in a professional setting, members of the public were put at risk of harm by her actions.

The panel also finds that Miss Clarke's conviction has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dangerous driving and recreational drug use as extremely serious.

Regarding remediation, the panel considered that it has not seen any information to suggest Miss Clarke [PRIVATE] is currently fit to practise safely and professionally. The panel has also not seen any information regarding Miss Clarke's current level of insight. On this basis, the panel determined that there is a risk of repetition of the conduct underpinning her conviction.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection and also the public interest.

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.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Clarke's name off the register. The effect of this order is that the NMC register will show that Miss Clarke has been struck-off the register.

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 noted that in the Notice of Meeting, dated 19 June 2024, the NMC had advised Miss Clarke that it would seek the imposition of a striking-off if it found Miss Clarke's fitness to practise currently impaired.

The NMC submitted that, while Miss Clarke's conviction is not directly linked with her clinical practice, the nature of the offending gives rise to public safety and public interest concerns. It submitted that, due to the seriousness of the convictions, an order that does not restrict Miss Clarke's practice is not appropriate. The NMC further submitted that there are no practical conditions that could reflect the seriousness of the facts of this case nor address the public interest concerns identified.

The NMC submitted that the further sentence of 16-months' imprisonment, imposed on 31 August 2023, is ongoing. It referred to the case of *Council for the Regulation of Health Care Professionals v General Dental Council & Anor* [2005] EWHC 87 (Admin) and submitted that as a general rule, a nurse should not be permitted to practise again until they have completed their sentence for a serious offence. The NMC further submitted that this case is so serious that temporary removal from the register in the form of a suspension would be inadequate and fail to address the concerns given Miss Clarke's lack of insight.

The NMC invited the panel to impose a striking-off order as the only appropriate sanction.

Decision and reasons on sanction

Having found Miss Clarke'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:

- That Miss Clarke was arrested for similar offences as those in the charges while on bail
- That Miss Clarke has not demonstrated insight into her failings
- That Miss Clarke's actions showed a disregard for the safety of members of the public and the police

The panel did not consider that there were any mitigating features in this case.

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 Clarke'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 Clarke'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. 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 Clarke's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case, and that Miss Clarke has not demonstrated a willingness to engage with NMC proceedings. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Clarke's registration would not adequately address the seriousness of this case and would not protect the public.

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 Clarke's actions is fundamentally incompatible with Miss Clarke remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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?*

The panel considered that Miss Clarke'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 Clarke's actions were serious 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 determined 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 Clarke'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.

This will be confirmed to Miss Clarke in writing.

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 Clarke's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC, who submitted that, if a finding is made that Miss Clarke's fitness to practise is impaired on public protection and public interest grounds, and that her conduct was fundamentally incompatible with continued registration, that an interim suspension order should be imposed.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to allow time for any appeal to be determined.

If no appeal is made, then the interim suspension order will be replaced by the substantive striking off order 28 days after Miss Clarke is sent the decision of this hearing in writing.

That concludes this determination.