

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

**Substantive Order Review Hearing
Tuesday, 21 May 2024**

Virtual Hearing

Name of Registrant: Barbara Harriet Clarke

NMC PIN 76Y2527E

Part(s) of the register: Registered nurse (sub part 1)
Adult nursing (level 1)

Relevant Location: London

Type of case: Misconduct

Panel members: Adrian Smith (Chair, lay member)
Elisabeth Fairbairn (Registrant member)
Matthew Wratten (Lay member)

Legal Assessor: Ashraf Khan

Hearings Coordinator: Catherine Blake

Nursing and Midwifery Council: Represented by Ben D'Alton, Case Presenter

Miss Clarke: Not present and not represented at the hearing

Order being reviewed: Conditions of practice order (6 months)

Fitness to practise: Impaired

Outcome: **Order to lapse upon expiry in accordance with Article 30 (1), namely 25 June 2024**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Clarke was not in attendance and that the Notice of Hearing had been sent to Miss Clarke's registered postal address on 11 April 2024.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Clarke's registered address on 11 April 2024. It was signed for against the printed name of 'Barbara Clarke'.

Mr D'Alton, on behalf of the Nursing and Midwifery Council (NMC), 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).

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Miss Clarke has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Clarke

The panel next considered whether it should proceed in the absence of Miss Clarke. The panel had regard to Rule 21 and heard the submissions of Mr D'Alton who invited the panel to continue in the absence of Miss Clarke. He submitted that Miss Clarke had voluntarily absented herself.

Mr D'Alton referred the panel to the documentation from Miss Clarke which included emails received by the NMC on 20 May 2024 which state:

'I am unable to attend tomorrow's review. I have been removed from the NMC register, and am no longer working.'

'And am happy for the review to continue without me.'

The panel accepted the advice of the legal assessor.

The panel has decided to proceed in the absence of Miss Clarke. In reaching this decision, the panel has considered the submissions of Mr D'Alton, the representations from Miss Clarke, and the advice of the legal assessor. It has had particular regard to the relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Clarke;
- Miss Clarke has informed the NMC that she has received the Notice of Hearing and confirmed she is happy for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Miss Clarke.

Decision and reasons on review of the substantive order

The panel decided to allow the current conditions of practice order to lapse.

This order will come into effect at the end of 25 June 2024 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the second review of a substantive conditions of practice order originally imposed for a period of length by a Fitness to Practise Committee panel on 25 November 2022. This was reviewed on 14 November 2023 and the order confirmed for six months.

The current order is due to expire at the end of 25 June 2024.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

‘That you, a registered nurse:

1. *On 7 February 2020, failed to administer 300mg of controlled drug Gabapentin at 18:00 to Patient E. **[Proved]***

2. *On 20 March 2020, failed to:*
 - a. *Escalate to senior management and/or a pharmacist that a GP had prescribed a controlled drug verbally over the telephone, contrary to Central London Community Trust’s Medicines policy. **[Proved]***
 - b. *Encourage Patient D to self-administer as they had their own supply of pain relief medication. **[Proved]***
 - c. *Complete a Datix entry to record that a verbal order for a controlled drug had been given. **[Proved]***

3. *On 8 April 2020, failed to administer Patient D’s daily dose of Warfarin at 18:00 and/or failed to escalate that Patient D had not received their dose of Warfarin for that day. **[Proved in part]***

4. *On 24 April 2020, failed to adequately complete a full skin assessment on Patient A in that you did not record 3 pressure areas. **[Proved]***

5. *On 24 April 2020, failed to document observations for the vital signs of Patient B and/or Patient C at 16.00 or as soon as possible after that time and/or failed to record that the notes which were documented were recorded some-time after 16.00. [Proved]*

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Miss Clarke's fitness to practise is currently 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 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 fitness to practise is impaired in the sense that s/he:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

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

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

d) ...'

The panel determined that limbs a, b and c in the above test were engaged in this case.

Taking into account all of the evidence adduced in this case, the panel found that patients were put at risk of serious harm as a result of Miss Clarke's misconduct. The panel was of the view that Miss Clarke's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next went on to consider the matter of insight. It took into account Miss Clarke's reflective statement, dated 18 October 2020. The panel was encouraged that at the time of her reflection, Miss Clarke demonstrated apology, remorse, an acceptance of the concerns raised against her practice, and had already made good developments in her insight. However, the panel found that it was not presented with any further evidence to indicate Miss Clarke's present level of insight or attempts she may have made to remedy the identified failures in her practice, as Miss Clarke has disengaged with the NMC since 2020. The panel was of the

view that Miss Clarke has not demonstrated a full understanding of how her actions put patients at a risk of serious harm or how this impacted negatively on her fellow team members and the reputation of the nursing profession. The panel therefore determined that Miss Clarke has not demonstrated full insight into the regulatory concerns.

The panel was satisfied that the misconduct in this case is capable of remediation. It had regard to a step taken by Miss Clarke to strengthen her practice, which was the completion of a record-keeping and documentation course, dated 19 October 2020. However, the panel bore in mind that the concerns in this case do not relate to any lack of competency of Miss Clarke, with regard to record-keeping and documentation, but rather her willingness to act appropriately in accordance with her competency and comply with professional standards in her clinical practice. Further, the panel considered that it has not received any other information to suggest that Miss Clarke has taken steps to address all the specific concerns raised about her practice in this case. The panel noted that Miss Clarke does not appear to have worked in a clinical setting since the referral. The panel therefore determined that the training course completed by Miss Clarke in October 2020 alone was not enough to demonstrate that she has strengthened her current practice.

The panel was of the view that there is a risk of repetition based on the lack of evidence of full insight, and lack of evidence that Miss Clarke has strengthened her practice. The panel had regard to the evidence of Witness 1 and Miss Clarke's own reflection, which outline issues regarding her [PRIVATE] personal circumstances at the time of the concerns. However, it noted that no further information or update has been put before it. The panel therefore considered that Miss Clarke's actions set out in the charges found proved demonstrated a pattern of behaviour that fails to acknowledge professional and clinical protocols, which led to unsafe practice. On the basis of all the information before it, the panel decided that there is a risk to the public if Miss Clarke was allowed to practise without restriction. The

panel concluded that a finding of current impairment on public protection grounds is necessary.

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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Clarke's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to 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:

- *Wide ranging misconduct which relates to fundamental nursing skills;*
- *A pattern of similar concerns over a period of time;*
- *Conduct which put patients at a risk of suffering harm and caused actual harm by leaving a patient in pain.*

The panel also took into account the following mitigating features:

- *[PRIVATE];*
- *Evidence to indicate that Miss Clarke was overwhelmed by being newly appointed to a band 6 position;*
- *Early admissions at local level investigation, remorse and apology.*

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 not protect the public or satisfy 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 issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Clarke's registration would be a sufficient and appropriate response. The panel is mindful that

any conditions imposed must be proportionate, measurable and workable.

The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems...;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered that there is no evidence of harmful deep-seated attitudinal problems, there are identifiable areas of Miss Clarke's clinical practice capable of re-training and there is no evidence of general incompetence. Although the concerns span a period of time, the panel accepted that it was a time when Miss Clarke was struggling [PRIVATE] with greater professional responsibilities than she had been used to previously. The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel was of the view that a conditions of practice order would give Miss Clarke the opportunity to demonstrate that she is capable of safe and effective practice, while protecting patients.

The panel also had regard to the fact that in Miss Clarke's 2020 reflective piece she demonstrated good developing insight, [PRIVATE], and had showed a willingness to respond to further training. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Clarke should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Miss Clarke's because it would be unduly punitive. The panel determined that public confidence in the profession would not be undermined by the imposition of a conditions of practice order. Although the panel was disappointed that Miss Clarke has disengaged from the fitness to practise process, it considered that at an early stage after the concerns came to light in 2020 Miss Clarke was already demonstrating good developing insight, [PRIVATE] and had taken a step towards strengthening her practice through training. Therefore, a suspension or a striking-off order would be disproportionate and would not allow Miss Clarke the opportunity to further strengthen her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

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

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must limit your practice to that of a band 5 nurse.*
- 2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.*

- *Monthly meetings to discuss your clinical caseload.*
3. *You must work with a designated supervisor who is a registered nurse to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, care of deteriorating patients, care of integument, tissue viability, record keeping and information governance. You must:*
 - a. *Send your case officer a copy of your PDP two weeks after starting a role.*
 - b. *Meet with your designated supervisor monthly to discuss your progress towards achieving the aims set out in your PDP.*
 - c. *Send your case officer a copy of your PDP with comments from your designated supervisor every four months.*
 4. *You must keep the NMC informed about anywhere you are working by:*
 - a. *Telling your case officer within seven days of accepting or leaving any employment.*
 - b. *Giving your case officer your employer's contact details.*
 5. *You must keep the NMC informed about anywhere you are studying by:*
 - a. *Telling your case officer within seven days of accepting any course of study.*
 - b. *Giving your case officer the name and contact details of the organisation offering that course of study.*
 6. *You must immediately give a copy of these conditions to:*
 - a. *Any organisation or person you work for.*
 - b. *Any agency you apply to or are registered with for work.*
 - c. *Any employers you apply to for work (at the time of application).*

- d. *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
 - e. *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*
7. *You must tell your case officer, within seven days of your becoming aware of:*
 - a. *Any clinical incident you are involved in.*
 - b. *Any investigation started against you.*
 - c. *Any disciplinary proceedings taken against you.*
8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*
 - a. *Any current or future employer.*
 - b. *Any educational establishment.*
 - c. *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 12 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Clarke has 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:

- *Miss Clarke's attendance at a future review hearing;*
- *Update from the designated supervisor (as above) and a copy of Miss Clarke's PDP;*

- *Evidence that Miss Clarke has fulfilled, or is working towards, remedying the concerns set out in her PDP;*
- *References and testimonials relating to Miss Clarke's clinical practice;*
- *An updated reflective statement from Miss Clarke, which covers the identified failures in her practice, insight into why these failures occurred, what she might do differently in the future in similar circumstances, [PRIVATE];'*

Decision and reasons on current impairment

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

The panel has had regard to all of the documentation before it, including the NMC bundle and emails from Miss Clarke. It has taken account of the submissions made by Mr D'Alton on behalf of the NMC.

Mr D'Alton referred to the email from Miss Clarke on 10 April 2024:

'I'm am[sic] now no longer registered with the NMC and have not worked as an RN for 3 years, and as I am now 67, [PRIVATE] will[sic] not be registering.'

He also referred to her email of 20 May 2024:

'I have been removed from the NMC register, and am no longer working.'

I now consider myself retired.'

Mr D'Alton submitted that the persuasive burden rests on the registrant to prove they have addressed the previous issues of impairment through insight, education, supervision or some other achievement. He submitted that, as of today's hearing, no such evidence has been provided that Miss Clarke has taken steps to address the original concerns.

Mr D'Alton noted that while Miss Clarke did provide initial evidence of working towards remediation, there has been no engagement since October 2020.

Mr D'Alton submitted that, in the lack of evidence to the contrary, Miss Clarke's practice remains impaired for the reasons outlined by the original panel. He submitted that there is a real risk of harm, and a risk of repetition if she were permitted to practise as a registered nurse without restriction. Mr D'Alton invited the panel to find her fitness to practice remains impaired.

Addressing the panel on sanction, Mr D'Alton directed the panel's attention to the NMC guidance on allowing a nurse to be removed from the register when a substantive order is in place. The guidance sets out that in most circumstances, nurses who are subject to a substantive conditions of practice order but no longer wish to continue practising, should be allowed to be removed from the register and that this can be achieved by a panel allowing a substantive order to expire in order to allow the registrant to be removed from the register. Mr D'Alton informed the panel that Miss Clarke has not paid her registration fee since 2021, so her registration would expire upon removal of a substantive order.

Mr D'Alton submitted that the primary consideration for a panel making this decision is whether there is clear evidence the nurse no longer wishes to practise, given that they can apply for readmission. Mr D'Alton submitted that Miss Clarke has disengaged from NMC proceedings since 2020. He referred to her most recent emails advising that she has now retired and does not intend to return to practice.

Mr D'Alton invited the panel to allow the current substantive order to lapse.

Mr D'Alton submitted that the public would remain suitably protected if the order was allowed to lapse. If Miss Clarke later applied for readmission to the register, the Registrar considering this application will be able to take into account a panel's decision on impairment at the time she was automatically removed from the register.

Mr D'Alton submitted there is no public interest in imposing a further order as this would continue regulatory proceedings against a registrant who has retired and expressed a wish

not to return to practice. Mr D'Alton submitted that Miss Clarke has had ample opportunity to engage and remediate, and the fact she has not supports her intention to retire from nursing.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Clarke's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Clarke had developing insight. At this hearing, the panel noted that there has been no evidence of further insight as Miss Clarke has ceased engagement with the NMC. Due to this, the panel has seen no evidence that Miss Clarke has taken steps to strengthen her practice. In light of this, the panel concluded that there has been no change in the circumstances since the last review.

The original panel determined that Miss Clarke was liable to repeat matters of the kind found proved. Today's panel has heard no new information that the risk of harm has been sufficiently lowered. In light of this, this panel determined that Miss Clarke remains liable to repeat matters of the kind found proved. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that a well-informed member of the public would be alarmed to learn that Miss Clarke were allowed to return to practice without demonstrating that she has satisfactorily strengthened her practice. Therefore, a finding of continuing impairment on public interest grounds is required.

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

Decision and reasons on sanction

Having found Miss Clarke'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 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel had regard to its previous findings on impairment in coming to this decision. It bore in mind that its primary purpose is to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator. It also took account of the NMC guidance REV-3h cited by Mr D'Alton regarding removing nurses from the register when there is a substantive order in place.

In this case, the panel concluded that, due to Miss Clarke's lack of engagement and clear intent to retire from nursing, no purpose would be served by imposing a further substantive order.

The panel noted that if Miss Clarke applied for readmission to the register in future, the live finding of impairment would be taken into consideration by the Registrar. In such event, the onus would be on Miss Clarke to establish that she is fit to practise. The panel therefore concluded that the public would remain suitably protected if the current order was allowed to lapse.

Having regard to all the options available to it, the panel determined to allow the order to lapse so that Miss Clarke can be removed from the register.

This will be confirmed to Miss Clarke in writing.

That concludes this determination.