

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

**Substantive Hearing
Friday 26 April 2019**

Nursing & Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant: **Natalie Jade Parkin**

NMC PIN: 15A0227E

Part(s) of the register: Registered Nurse – Sub Part 1
RNLD: Learning Disabilities – September 2015

Area of registered address: Yorkshire

Type of case: Conviction

Panel members: Jacqueline Alexander (Chair, lay member)
Bernie Nipper (Registrant member)
Allison Hume (Registrant member)

Legal Assessor: Jeremy Barnett

Panel Secretary: Sara Page

Nursing and Midwifery Council: Represented by Neil Jeffs, Case Presenter

Miss Parkin: Not present and unrepresented in her absence

Facts proved: Charge i)

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Details of charge:

“That you, a registered nurse:

- i) On 16 January 2018, were convicted at the Crown Court at Sheffield of knowingly give a list A article to a prisoner.

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

Decision on service of Notice of Hearing:

The panel was informed at the start of this hearing that Miss Parkin was not in attendance and that written notice of this hearing had been sent to Miss Parkin’s registered address by recorded delivery and by first class post on 25 March 2019.

The panel had regard to the Royal Mail ‘Track and trace’ printout which showed the Notice of Hearing was delivered to Miss Parkin’s registered address on 26 March 2019. It was signed for in the name of ‘PARKIN’.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Parkin’s right to attend, be represented and call evidence, as well as the panel’s power to proceed in her absence.

Mr Jeffs, 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.

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

Decision on proceeding in the absence of Miss Parkin:

The panel next considered whether it should proceed in the absence of Miss Parkin. The panel had regard to Rule 21(2), which states:

- “21.— (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.”

Mr Jeffs referred the panel to a number of documents including the ‘Response to the regulatory concerns form’ dated 28 June 2018, a completed Case Management Form (CMF) dated 26 February 2019, and an email to Miss Parkin from an NMC Case Coordinator responding to the CMF dated 18 March 2019.

In the CMF, Miss Parkin indicated that she wished for her case to be dealt with at a hearing but that she did not intend to attend. She cited her reasons for non-attendance as not being able to arrange childcare options for her young child, having to rely on public transport to travel

to London and not having the funds to do so. Mr Jeffs referred the panel to the email sent to Miss Parkin from the NMC which offered her a number of options if she wished to engage, including the possibility of attending remotely via video link. This email was sent on 18 March 2019 and there has been no response from Miss Parkin in relation to this email to date.

Mr Jeffs submitted that there was no indication that, should the panel adjourn the hearing to a later date, Miss Parkin would be able to address her concerns outlined in her CMF regarding travelling to London in order to attend should the case be relisted. Further, he submitted that it would not be possible to say when the case would be relisted but that it would no doubt incur a delay of these proceedings. He reminded the panel that Miss Parkin has been served with all the documentation before the panel and has responded in writing on a number of occasions outlining her position on the allegations and regulatory concerns. There are no witnesses in this case and the evidence relied upon is solely documentary so a delay would not be detrimental to the memories of the witnesses nor would it inconvenience them in any way. However, Mr Jeffs submitted that it was clearly in the public interest for this case to be dealt with as expeditiously as possible.

In addition, Mr Jeffs also informed the panel that an NMC Case Officer had attempted to make contact with Miss Parkin via email and telephone this morning but at the time the hearing commenced, contact had not been established.

Mr Jeffs invited the panel to continue in the absence of Miss Parkin on the basis that she had voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised “with the utmost care and caution” as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel further noted the case of *R (on the application of Raheem) v Nursing and Midwifery Council [2010] EWHC 2549 (Admin)* and the ruling of Mr Justice Holman that:

“...reference by committees or tribunals such as this, or indeed judges, to exercising the discretion to proceed in the person's absence "with the utmost caution" is much more than mere lip service to a phrase used by Lord Bingham of Cornhill. If it is the law that in this sort of situation a committee or tribunal should exercise its discretion "with the utmost care and caution", it is extremely important that the committee or tribunal in question demonstrates by its language (even though, of course, it need not use those precise words) that it appreciates that the discretion which it is exercising is one that requires to be exercised with that degree of care and caution.”

The panel has decided to proceed in the absence of Miss Parkin. In reaching this decision, the panel has considered the submissions of Mr Jeffs, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v. Jones* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- There is no reason to suppose that adjourning would secure Miss Parkin’s attendance at some future date;
- Miss Parkin has been given opportunity to participate via video link but has not responded to this proposal;
- Miss Parkin has provided written representations that the panel are able to consider;
- There have been attempts made today to contact Miss Parkin by telephone and email but contact has not been established; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Parkin in proceeding in her absence. However, in the panel’s judgement, this can be mitigated. Furthermore, the limited disadvantage is the consequence of Miss Parkin decisions to absent herself from the hearing, waive her rights to attend, and/or be represented.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Parkin. The panel will draw no adverse inference from Miss Parkin's absence in its findings.

Determination on the facts:

The charges concern Miss Parkin'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 Rules 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.”

In addition, the panel had regard to Miss Parkin's completed CMF dated 26 February 2019 in which Miss Parkin indicated in the tick box that she admitted the charge.

Accordingly, the panel finds the charge proved by way of both Miss Parkin's admissions and the copy of the Certificate of Conviction.

Background

Miss Parkin was first admitted to the register of nurses on 17 September 2015. She self-referred to the NMC on 27 February 2018.

The charges arose whilst Miss Parkin was employed as a registered nurse at Star House, a unit for children with learning difficulties and complex needs.

On 16 January 2018, Miss Parkin was convicted at the Crown Court at Sheffield of the offence referred to in the charge.

The offence involved Miss Parkin taking a quantity of tablets comprising of (a) 58 tablets and tablet fragments (unknown); (b) 27 x ½ tablets of Class B Buprenorphine; and (c) a further 5.44 grams of powder and smaller tablet fragments containing Class A cocaine and Class B Buprenorphine into HMP Lindholme where the drugs were passed by Miss Parkin to her then-partner, who was a serving prisoner

On 21 February 2018, the judge sentenced Miss Parkin as follows: (a) 16 months imprisonment, suspended for 18 months with 30 days Rehabilitation Activity Requirement; (b) forfeiture and destruction of all drugs and paraphernalia; and (c) to pay a Victim Surcharge of £140.00 within 28 days

Determination on fitness to practise:

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

Submissions on impairment

Mr Jeffs addressed the panel on the issue of impairment and reminded the panel to have regard to protecting 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. This included reference to the cases of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin), Cohen v General Medical Council [2008] EWHC 581 (Admin), Bolton v The Law Society [1993] EWCA Civ 32 (06 December 1993), and CRHP v General Dental Council & Fleischmann [2005] EWHC 87 (Admin).

Mr Jeffs submitted that due to the seriousness of the nature of the conviction and due to the limited insight demonstrated by Miss Parkin in her written representations, it is clear that her fitness to practise remains currently impaired. He submitted that Miss Parkin has stated that as the conviction is not linked to her clinical practice, and relying on the exceptional mitigating factors, her fitness to practise is unaffected. Mr Jeffs submitted that Miss Parkin has clearly overlooked the seriousness of the conviction and has no regard to the public interest in this matter. He reminded the panel that as well as breaching the criminal law, Miss Parkin has also breached the professional standards she is obliged to adhere to as a registered nurse.

In her written representations, Miss Parkin states that she does not believe her fitness to practise is currently impaired as the conviction relates to matters in her personal life and has no direct connection with her nursing position. She states that she has worked extremely hard to gain her nursing qualification and understands the implications the offence has not only on her personal life but also on the public and her profession. Miss Parkin confirms that she is currently working as a nurse and there are no concerns with her clinical practice. She also states that her current employer is aware of her conviction and the NMC proceedings.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

Decision on impairment

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

- a) ...
- 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 considered that one of the fundamental tenets of the nursing profession is the promotion of professionalism and trust. This is defined in the 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' ("the Code") as:

"You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public."

The panel was satisfied that Miss Parkin's conduct breached the following sections of the Code:

"20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1 keep to and uphold the standards and values set out in the Code
- 20.2 act with ... integrity at all times...
- 20.4 keep to the laws of the country in which you are practising
- 20.8 act as a role model of professional behaviour..."

In having breached such a fundamental tenet, the panel was in no doubt that Miss Parkin's conduct has brought the profession into disrepute. The panel took into account that whilst Miss Parkin states that she does understand that her conduct has affected the public, she deflects responsibility and does not appear to fully recognise the seriousness of the conviction and the impact it may have on the public's perception of the nursing profession or the NMC as its regulator. Nurses are expected to uphold the laws of the country in which they practise, both in the individual's personal life and professional conduct, as they are inextricably linked. The

panel bore in mind the mitigating circumstances at the time of the conduct that led to the conviction but it did not consider that to be an excuse for a nurse knowingly taking controlled drugs into a prison for a serving inmate.

In considering the questions in Cohen v GMC, the panel found that although there is the possibility of remediation, the seriousness of the conduct and Miss Parkin's current lack of proper insight meant that she has not yet remedied her conduct. It took into account Miss Parkin's written representations and the judge's sentencing remarks in coming to his decision that the risk of repetition is negligible.

The panel has borne in mind that Miss Parkin is currently working as a nurse and there have been no issues relating to her clinical practice. In this regard, the panel does not find that Miss Parkin's fitness to practise is impaired on public protection grounds.

The panel acknowledged 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 matters it is considering in this case are particularly grave and to not make a finding of current impairment would seriously undermine public confidence in the nursing profession and the NMC as its regulator.

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

Determination on 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 Parkin off the register. The effect of this order is that the NMC register will show that Miss Parkin 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.

Submissions on sanction

Mr Jeffs informed the panel that in the Notice of Hearing, dated 25 March 2019, the NMC had advised Miss Parkin that it would seek the imposition of a striking-off order if it found Miss Parkin's fitness to practise currently impaired.

Decision on sanction

Having found Miss Parkin'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 determined that there had been a clear breach of a fundamental tenet of the profession and considered the aggravating features to be the following:

- The seriousness of the offence;
- The reputational damage to the profession;
- The judge's remarks on drugs in prison; and
- Miss Parkin's limited insight into her conduct.

The panel then considered the mitigating features:

- The measure of coercion Miss Parkin faced at the material time; and
- Miss Parkin's self-referral and early admission to the charge.

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, an order that does not restrict Miss Parkin'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 Parkin's conduct 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 Parkin'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 charge in this case. The conduct which led to Miss Parkin's conviction is not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Parkin's registration would not adequately address the seriousness of this case.

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;
- The nurse ... has insight and does not pose a significant risk of repeating behaviour.

Whilst Miss Parkin's conviction related to one incident, it was a serious and significant departure from the standards expected of a registered nurse. She has demonstrated only limited insight into her conduct and has made it clear that she does not consider that her conduct in her personal life has any impact on her profession. The panel was satisfied that Miss Parkin's failure to appreciate that her behaviour in her personal life is also representative of her as a registered nurse and professional meant that there remains a risk of her repeating similar behaviour in the future.

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 ... raise fundamental questions about their professionalism?
- Can public confidence in nurses ... be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will ... maintain professional standards?

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

Having noted the judge's sentencing remarks in finding current impairment, the panel considered them again in determining sanction. The panel was mindful that personal mitigation carried less weight in regulatory proceedings than in criminal sentencing. The panel also

weighed the judge's comments against the impact of Miss Parkin's actions on the reputation of the profession. The panel noted the NMC guidance that "the reputation of the profession is more important than the fortunes of any individual member of those professions." [Bolton v The Law Society [1994] 1WLR 512]

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Parkin'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.

Determination on interim order

The panel has considered whether an interim order should be made on the grounds that it is in the public interest. The panel took account of the representations made by Mr Jeffs on behalf of the NMC. He reminded the panel that the threshold for imposing an interim order on the grounds of public interest alone is high; however, he submitted that due to the severity of the conviction, this could be made out in this case.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary in the public interest. The panel had regard to the seriousness of the conviction and the reasons set out in its decision for the striking-off order in reaching the decision to impose an interim order. It concluded that it would be wholly inconsistent with its reasons for imposing the striking-off order to do otherwise.

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 striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months, to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.