

Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

10 January 2020

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

Name of registrant:	Stephanie Louise Newsome
NMC PIN:	10H2094E
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing – 2 September 2010 Health Visitor – 18 December 2013 Prescriber – 18 December 2013
Area of Registered Address:	Derbyshire
Type of Case:	Conviction
Panel Members:	Dermot Keating (Chair, lay member) Marcia Levene Smikle (Registrant member) Bill Matthews (Lay member)
Legal Assessor:	Ian Ashford-Thom
Panel Secretary:	Sophie Cubillo-Barsi
Registrant:	Not present and not represented
Nursing and Midwifery Council:	Represented Dulcie Piff, Counsel
Consensual Panel Determination:	Accepted
Facts proved:	All
Fitness to practise:	Impaired
Sanction:	Caution order – 5 years
Interim Order:	N/A

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Newsome was not in attendance and that written notice of this hearing had been sent to Miss Newsome's registered address by recorded delivery and by first class post on 11 December 2019. Further, notice of this hearing was also sent to Miss Newsome's representative on 11 December 2019.

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

Ms Piff, on behalf of the NMC, submitted the NMC 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 Newsome has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It 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.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Miss Newsome.

The panel had regard to Rule 21 (2) states:

- (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.

Ms Piff referred the panel to the proposed Consensual Panel Determination (CPD) agreement, which was signed by Miss Newsome on 6 January 2020, which states:

“The Registrant does not intend to attend the hearing and is content for it to proceed in her and her representative’s absence. The Registrant or her representative will endeavour to be available by telephone should any clarification on any point be required.”

Ms Piff submitted that it is unlikely that an adjournment would secure Miss Newsome’s attendance at a future date and invited the panel to proceed in her absence.

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*.

Miss Newsome had been sent notice of today’s hearing and the panel was therefore satisfied that she was aware of today’s hearing and it is of the view that she had chosen to not attend. The panel, therefore, concluded that she had chosen voluntarily to absent herself. The panel had no reason to believe that an adjournment would result in Miss Newsome’s attendance. Having weighed the interests of Miss Newsome with those of the NMC and the public interest in an expeditious disposal of this hearing the panel determined to proceed in Miss Newsome’s absence.

The panel will draw no adverse inference from Miss Newsome’s absence in its findings of fact.

Consensual panel determination

At the outset of this hearing, Ms Piff informed the panel that prior to this hearing a provisional agreement of a consensual panel determination had been reached with regard to this case between the NMC and Miss Newsome.

The agreement, which was put before the panel, sets out Miss Newsome's full admission to the facts alleged in the charges, and that Miss Newsome's fitness to practise is currently impaired by reason of her conviction. It is further stated in the agreement that an appropriate sanction in this case would be a caution order for a period of five years.

The panel has considered the provisional agreement reached by the parties.

That provisional agreement reads as follows:

Agreement

Stephanie Louise Newsome, PIN 10H2094E, ('the Registrant') is aware of the CPD hearing. The Registrant does not intend to attend the hearing and is content for it to proceed in her and her representative's absence. The Registrant or her representative will endeavour to be available by telephone should any clarification on any point be required.

The Nursing and Midwifery Council ('the NMC') and the Registrant (collectively 'the Parties') agree as follows:

The Charges

1. The Registrant admits the following charges:

That you, a registered nurse:

1. On 20 November 2018 at Chesterfield Magistrates' Court were convicted of:
 - a. Assaulting a constable in the execution of his duty on 30 September 2018, contrary to section 89(1) of the Police Act 1996;
 - b. Failing to provide a specimen for analysis (driving or attempting to drive) on 30 September 2018, contrary to section 7(6) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988;

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

The Agreed Facts

2. The Registrant appears on the register of nurses and midwives maintained by the NMC as a Registered Nurse – Adult, Specialist Community Public Health Nurse and Community Practitioner Nurse Prescriber. She registered in 2010.
3. The Registrant self-referred on 19 November 2018 in relation to her then impending court appearance. At the time of the referral DHU Health Care employed the Registrant as an associate nurse practitioner.
4. The Registrant was convicted on 20 November 2018 at Northern Derbyshire Magistrates' Court of assault on a police constable in the execution of his duty and failure to provide a specimen for analysis.
5. The Registrant received a sentence of 6 weeks (4 and 6 weeks concurrent) imprisonment suspended for 1 year, a 29 month driving ban and fine.
6. As a result of her conviction, DHU Health Care dismissed the Registrant from her post in December 2018. Hamilton Cross, a nursing agency, currently employs the Registrant as a registered nurse.
7. The events that resulted in the Registrant's conviction occurred on 30 September 2018. The incident occurred in a private settling on 30 September 2018 at 10pm.

The Registrant was involved in a traffic collision, kicked out at a police officer and then refused to provide a breath specimen at the scene and later refused to provide a blood sample in hospital.

8. *The events did not take place at the Registrant's place of work or while carrying out her duties as a nurse. [PRIVATE] The Registrant has stated that she has taken steps to address these issues and continues to do so (**Appendix 1**).*
9. *There have been no clinical incidents and no incidents have been raised by her employers to suggest that patients have been put at risk.*
10. *The charge in this case concerns the Registrant's conviction and, having regard to the copy of the extract conviction, the panel is invited to find the facts proved in accordance with Rule 31 (2) and (3) of the Rules which states:*
 - (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.*
11. *The Memorandum of Conviction, provided by Northern Derbyshire Magistrates' Court confirms the details of the Registrant's conviction (**Appendix 2**).*
12. *As part of its own investigation the NMC has received and assessed all of the relevant evidence obtained during the local investigations.*
13. *All facts as detailed in the charges are admitted by the Registrant.*

Current Impairment

14. *In relation to impairment, the general approach to what might lead to a finding of impairment was provided by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in the case of CHRE v NMC & Grant [2011] EWHC 927 at paragraph 76 in the following terms:*

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; and/or*
- d. ...

15. *It is accepted that the Registrant has, in the past, brought the profession into disrepute and has breached a fundamental tenet of her profession. The incidents which led to her conviction occurred in the Registrant's private life and there is no suggestion that patients were put at risk. Nevertheless, the conviction is a serious matter and involves an instance violent behaviour on the part of the Registrant.*

16. *The Registrant has a previous drive excess alcohol conviction from 2008. This occurred whilst the Registrant was at university and she declared it.*

Insight, remorse and current practice

17. *The Registrant has provided substantial mitigation and reflection. The Registrant completed her suspended sentence on 20 November 2019. The matters in this case relate to an incident which occurred in the Registrant's private life for which she has provided personal mitigation and demonstrated her insight and remorse. The Registrant has stated: "Losing the Nurse practitioner role that I had relentlessly progressed my Nursing career towards, will be the hardest consequence that I will carry with me throughout my working career."*
18. *The Registrant's reflective statement analyses the circumstances that led to the incident, reflects upon the incident, and accepts full responsibility for it. The Registrant demonstrates insight and ruminates upon the effect it has had on her career. The Registrant also sets out an action plan in which she says she has successfully completed her probation requirements which included work that reduces any future risks of reoffending, promotes healthy coping mechanisms along with empowering her to make better decisions.*
19. *The registrant also expresses the wish that "...At a later stage in the future I would love to branch into the addiction/education field of nursing; with a view to help and support those in need and affected by such issues as I believe that I would be an empathetic role model."*
20. *The Registrant has provided certificates of recent training she had undertaken. She has also provided positive character references from previous colleagues at DHU Health Care (**Appendix 1**). The previous employer DHU Health Care have stated that there were no concerns regarding the registrant's clinical practise. The Registrant is currently employed as a registered nurse through an agency.*
21. *[PRIVATE]*
22. *It is agreed that the Registrant's unrestricted practice does not present a risk to the health, safety and well-being of the public.*

23. *In light of the Registrant receiving a custodial sentence and the nature of the conviction, a finding of impairment is necessary in order to protect the public and the wider public interest. If no finding of impairment were made, public confidence in the profession and the NMC as regulator would be undermined. As such, a finding of impairment on public interest grounds alone is appropriate in this case.*

Sanction

24. *The Parties agree that the appropriate sanction in this case is a caution order.*

25. *In determining sanction the panel should have regard to the NMC's published sanctions guidance.*

26. *The NMC identify the Registrant's previous drink drive conviction as an aggravating factors.*

27. *In relation to mitigating factors, the Registrant has demonstrated insight and has provided references and certificates of training (**Appendix 1**).*

28. *In taking the available sanctions in ascending order, considering the least restrictive first, the Parties agree that taking no further action would not be appropriate as this would not be sufficient to uphold the public interest.*

29. *Caution order: The NMC sanction guidance 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.'*

30. *It has already been highlighted that in this case there was no patient harm and that the Registrant has reflection which describes the contextual pressures which she provides as context, but not as an excuse, and her insight is evidently well-developed. The Registrant has also provided current positive testimonials.*

31. *In relation to the imposition of any 'higher' sanction, the Parties agree that a conditions of practice order or any such order removing the Registrant from practice*

is unnecessary. There is no evidence of general incompetence in this case. When considered alongside the mitigating factors identified in this case, the Registrant's conviction is not fundamentally incompatible with the Registrant continuing to be a registered nurse.

32. The Parties agree that the public, in possession of the full details of this case would be satisfied that a caution order was appropriate and further that such an order was necessary to maintain public confidence in the profession and its regulator. There is, additionally, a public interest in allowing a safe nurse to continue to practise.

33. The Parties agree that the caution order should be for the maximum period of five years, in order to properly mark the seriousness of the conviction and associated behaviour. A caution order of this length will also serve as a salutary lesson to the Registrant.

34. In summary, the parties agree that a caution order for five years will:

- Send a clear message to the public and the profession, and the Registrant, about the standards of behaviour expected of a registered nurse;*
- Be a proportionate sanction;*
- Meet the public interest of maintaining confidence in the profession and the regulatory process.*

Here ends the provision agreement between the NMC and Miss Newsome. The provisional agreement was signed by Miss Newsome 6 January 2020 and by the NMC on 7 January 2020.

Decision and reasons on the consensual panel determination:

The panel decided to accept the provisional agreement.

The panel heard and accepted the legal assessor's advice. He referred the panel to the NMC Sanctions Guidance (SG). He reminded the panel that they could accept, amend by agreement or reject outright the provisional agreement reached between the NMC and Miss Newsome. Further, the panel should consider whether the provisional agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Newsome admitted the facts of the charges. Accordingly the panel was satisfied that the charges are found proved by way of Miss Newsome's admission as set out in the signed provisional agreement before the panel.

The panel then went on to considered whether Miss Newsome's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Newsome where this was admitted, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel endorsed paragraphs 14 to 16 of the provisional agreement, in that Miss Newsome's conviction engages two limbs of the test set out in *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*. Specifically, that Miss Newsome has, in the past, brought the profession into disrepute and has breached a fundamental tenet of her profession.

The panel noted that Miss Newsome accepted, at an early stage, that her behaviour which led to the conviction was unacceptable and considered the fact that she competed a self-referral to the NMC.

Further, the panel carefully considered Miss Newsome's reflective piece and noted that she demonstrates insight into her conviction and is now able to identify the reasons as to why the behaviour which resulted in the conviction occurred. The panel acknowledged that Miss Newsome continues to address those underlying matters.

The panel was mindful that no suggestion has been made by either parties that patients were placed at a risk of harm by way of Miss Newsome's offending behaviour. To the contrary, the panel had before it positive character references from current and previous colleagues, who attest to her clinical practice. In light of this, the panel accepted that Miss Newsome's unrestricted practice does not present a risk to the health, safety and well-being of the public. The panel therefore endorsed paragraph 23 of the provisional agreement and determine that a finding of impairment is not required on public protection grounds.

However, the panel determined that should a finding of no impairment be made, public confidence in the profession and the NMC as a regulator would be undermined. As such, the panel concluded that a finding of impairment on public interest grounds alone is appropriate in this case.

Having found Miss Newsome'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. The purpose of any sanction is not intended to be punitive even though it may have a punitive effect. The panel had careful regard to the SG. Decision on sanction is a matter for the panel exercising its own independent judgement.

The panel considered this case very carefully and decided to make a caution order. The effect of this order is that Miss Newsome's name on the NMC register will show that Miss Newsome is subject to a caution order and anyone who enquires about her 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. The panel accepted the advice of the legal assessor.

The panel first considered whether to take no action but concluded that the conviction in Miss Newsome's case needs to be marked in order to demonstrate that such behaviour is unacceptable and must not happen again. Further, the panel decided that it would not be 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.'* Whilst the panel acknowledged that the conviction received in November 2018 was the second conviction Miss Newsome had received for drink driving, the panel noted that those convictions occurred ten years apart and that Miss Newsome has shown considerable insight into her offending behaviour. Further, Miss Newsome has engaged with the NMC since her self-referral and the panel has been told that there have been no adverse findings in relation to Miss Newsome's practice.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at conditions of practice. The panel noted that Miss Newsome is currently working as a registered nurse and that there are no concerns regarding her clinical practice. Accordingly, the panel determined that there would no useful purpose served by a conditions of practice order. The panel further considered that a suspension order would be wholly disproportionate in Miss Newsome's case. It is not necessary to protect the public and would deprive the public of an otherwise competent nurse from unrestricted nursing practice.

The panel has decided that a caution order would adequately protect the public. For the next five years Miss Newsome's employer or any prospective employer will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to a restriction. 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 five 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 and will serve to encourage Miss Newsome with her continued reflection.

At the end of this period the note on Miss Newsome's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that Miss Newsome's fitness to practise had been found impaired. If the NMC receives a further allegation that Miss Newsome'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 decision will be confirmed in writing.

That concludes this determination.