

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

**Substantive Order Review Meeting
Wednesday 16 September 2020**

Virtual Meeting

Name of registrant: Jane Marjorie Clarke

NMC PIN: 78I3226E

Part(s) of the register: Registered Nurse – sub Part 1
RN1: Adult 1 January 2000

Area of registered address: Cumbria

Type of case: Misconduct

Panel members: Anne Owen (Chair, registrant member)
Patricia Lynch (Registrant member)
Jill Wells (Lay member)

Legal Assessor: Peter Jennings

Panel Secretary: Melissa McLean

Order being reviewed: Conditions of practice order (12 months)

Fitness to Practise: Impaired

Outcome: Impaired – Order to lapse upon expiry namely at the end of 28 October 2020.

Service of Notice of Meeting

The panel considered whether notice of this meeting had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”). As of 31 March 2020 a number of temporary amendments to the Rules came into force, in response to the current Covid-19 pandemic.

As a result of these amendments the Nursing and Midwifery Council (NMC) is now able to serve notice of hearings by email and has the ability to hold hearings and meetings virtually.

The panel accepted the advice of the legal assessor

The panel noted that the notice of this substantive meeting was sent to Mrs Clarke’s registered email address on 28 May 2020. The notice informed Mrs Clarke that her conditions of practice order would be reviewed at a meeting on or after 14 September 2020, unless she asked for the review to take place at a hearing. The panel also noted an email from Mrs Clarke dated 14 May 2020 to an NMC case officer which stated:

“I am happy for the review meeting to go ahead with a panel”

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. The panel was also satisfied that it was appropriate to proceed with this review at a meeting, given that Mrs Clarke has not requested a hearing.

Decision and reasons on review of the substantive order

The panel decided that Mrs Clarke’s fitness to practise remains currently impaired. It went on to determine that the appropriate sanction in this case was to take no further action and allow the current conditions of practice order to expire at the end of 28 October 2020. This will bring these Fitness to Practise proceedings to an end, Mrs Clarke’s NMC registration will lapse and she will no longer be able to practise as a nurse.

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 27 September 2019.

The current order is due to expire at the end of 28 October 2020.

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, while employed as a home manager at Blackwell Vale Care Home ("the home"),

1. *Allowed service users to have access to hazardous substances and items, namely, alcohol, cleaning products, "thick & easy" food thickener, Steradent denture tablets and a pair of scissors **[proved]***
2. ...
3. *Did not properly address a number of infection control and dignity issues, namely,*
 - a. ...
 - b. *A urine soaked mattress, **[proved]***
 - c. *Filthy crash mats, **[proved]***
 - d. *Bedsheets marked with faeces, **[proved]***
 - e. *Items covered in old, dry food. **[proved]***
4. *Did not update personal emergency evacuation plans. **[proved]***
5. *Did not ensure proper arrangements were in place for the safe administration, management and record keeping of medications, namely,*
 - a. *Service user J's hydrocortisone cream was not administered at the prescribed frequency. **[proved]***
 - b. ...

- c. *Service user L's Promethazine was not recorded on her Boots covert medication form. [proved]*
 - d. ...
 - e. *Galantamine medication for Service user N was not ordered in a timely manner, resulting in her being without it for six days. [proved]*
 - f. *Paracetamol stock levels for Service user C were not properly managed, which resulted in him being without it for nine days. [proved]*
6. *Did not have a consistent system in place to ensure proper management and record keeping of wound care. [proved]*
7. ...
8. ...
9. ...

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

The present panel noted that the original panel, while finding all of those matters proved as facts, found that only 3b, 3c, 4, 5e and 5f amounted to misconduct.

The original panel on 27 September 2019 determined the following with regard to impairment:

'Regarding insight, the panel considered that Mrs Clarke had developed some insight and had reflected on some of the factors which could have impacted on her own performance. The panel noted in her reflective statement dated 5 May 2019, that Mrs Clarke has expressed remorse and regret over the incidents.

The panel noted that Mrs Clarke had been going through particularly difficult personal circumstances at the time of the CQC inspection. Her employer was aware of her acute problems but had encouraged her to continue working throughout these circumstances. Mrs Clarke agreed to do

so on the basis that she would be well supported by the organisation including daily calls from her Regional Manager. However, she says this did not happen and the panel has no evidence to the contrary.

[PRIVATE]

In its consideration of whether Mrs Clarke has remedied her practice the panel took into account that she has been working in a retail job and has not worked as a nurse since February 2018. Mrs Clarke has been candid and has remained engaged with the NMC throughout proceedings and has expressed that she no longer wishes to practice as a nurse. Although the panel considered that the issues raised in Mrs Clarke's case were remediable, the panel had no evidence that she had taken any steps to remedy them or keep her nursing skills up to date.

The panel noted that these appeared to be a number of one off incidents over a short period of time, and although the panel had seen no evidence of patient harm, given that at least one patient did not receive medication for nine days, and another for six days there was a possibility of harm. The panel is of the view that there is a risk of repetition based on there being no evidence of remediation and because Mrs Clarke has shown no desire to remediate at the present time. The panel also noted that although Mrs Clarke's personal circumstances may have improved, they are not totally resolved. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The original panel on 27 September 2019 determined the following with regard to sanction:

'The panel considered the relevant aggravating and mitigating factors in reaching its decision on the appropriate sanction.

The panel took into account the aggravating factor:

- *The potential risk of harm to vulnerable patients and to staff.*

The panel took into account the mitigating factors:

- *[PRIVATE]*
- *Mrs Clarke has had a 40 year unblemished career in nursing.*
- *Mrs Clarke has worked for seven years as a Manager and had raised the CQC rating at the Home.*
- *There was a lack of senior management support for Mrs Clarke at the Home.*
- *Mrs Clarke has engaged with the NMC proceedings.*
- *Mrs Clarke has shown remorse.*
- *There are no concerns about Mrs Clarke's clinical practice.*
- *There were nurses and others working in more direct contact with residents who should have noted and brought these issues to Mrs Clarke's attention*
- *Mrs Clarke has no deep seated or attitudinal issues.*
- *There had been longstanding issues with the pharmacy providing timely medication to the Home.*

The panel first considered whether to take no action but concluded that this would be inappropriate as it would not address remediation or the need for reflection. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

...

The panel considered that a caution order would be inappropriate as it would not address remediation or the need for reflection. 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 Mrs 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 Sanctions Guidance ('SG').

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 had regard to the fact that these incidents occurred when Mrs Clarke was the manager of the Home and that, other than these incidents, she has had a long, unblemished career as a nurse. Ms 4 noted that Mrs Clarke was considered to be a good strong manager and that her Regional Manager had not raised any concerns about her. The panel was of the view that it was in the public interest that, with appropriate safeguards, Mrs Clarke should be able to return to practice as a nurse, should she wish.

Balancing all of these factors and after having taken into account both the aggravating and mitigating features of this case, 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 Mrs Clarke's case.

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

- 1. You must keep us 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.**

2. You must keep us informed about anywhere you are studying by:

- a. Telling your case officer within 7 days of accepting any course of study
- b. Giving your case officer the name and contact details of the organisation offering the course of study

3. 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 when you are working independently

4. You must tell your case officer, within seven days of your becoming aware of:

- Any clinical incident you are involved in.
- Any investigation started against you.
- Any disciplinary proceedings taken against you.

5. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:

- Any current or future employer.
- Any educational establishment.
- Any other person(s) involved in your retraining and/or supervision required by these conditions.

6. In these conditions, “work” means work requiring registration with the NMC. “Study” means study on a course requiring registration with the NMC. “Employer” and “educational establishment” are similarly limited to nursing. For example, you are not required to disclose these conditions to an employer in a retail business.

7. If you obtain work which requires registration with the NMC, you must work with your line manager to create a personal development plan (PDP).

Your PDP must address the concerns about infection control, patient dignity, risk assessment for residents and medication ordering. You must:

- Send your case officer a copy of your PDP within 2 weeks of it being agreed.*
- Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.*
- Send your case officer a report from your line manager 2 weeks before any review. This report must show your progress towards achieving the aims set out in your PDP.*

The period of this order is for 12 months.

...

Any future panel reviewing this case would be assisted by:

- A reflective statement about how Mrs Clarke's failings impacted the lives of the residents affected at least two weeks before any review hearing or meeting.*

Decision and reasons on current impairment

The panel has considered carefully whether Mrs 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 had regard to all of the documentation before it, including the decisions and reasons of the previous panels. It also took into account an email from Mrs Clarke dated 13 May 2020, which reads as follows (sic):

“... I have no changes in my circumstances and would like to reiterate the fact that I have no interest in returning to nursing in any form in the future.”

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 Mrs Clarke's fitness to practise remains impaired. The panel noted that there is no evidence before it of any material change in circumstances since the substantive order was imposed. The panel also noted that Mrs Clarke has made clear her intention not to return to the nursing profession. It took into account that at the original substantive meeting, Mrs Clarke detailed that she had not worked as a nurse since February 2018 and expressed that she no longer wishes to practise as a nurse. Further, the panel noted that as Mrs Clarke has not been working as a nurse, she has been unable to fulfil the conditions.

The panel bore in mind that the charges that were found proved at the substantive meeting were serious, and occurred over a short period of time. Given these circumstances, the panel considered that Mrs Clarke has not remediated her original misconduct and is highly unlikely to in the future. In the absence of remediation the panel concluded that there is a risk of repetition. The previous panel determined that should Mrs Clarke return to nursing she was liable to repeat matters of the kind found proved. Today's panel has received no further information on which it could make a different decision. The panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection. Regarding insight, the last panel found that Mrs Clarke had developed some insight and provided a reflection. However today's panel has had no new information to suggest that Mrs Clarke has further developed her insight.

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. It noted the passage of time since the substantive meeting, throughout which time Mrs Clarke has not been employed

as a registered nurse. In circumstances where the panel had found an ongoing risk of harm to the public, it determined that, in this case, a finding of continuing impairment on public interest grounds is also required. As a regulator, the public would expect the NMC to take action to prevent a nurse who currently poses a risk to public safety from continuing to practise.

For these reasons, the panel finds that Mrs Clarke's fitness to practise remains impaired, both on public protection grounds and in the wider public interest.

Decision and reasons on sanction

Having found Mrs 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 first considered whether to take no action. The panel noted that Mrs Clarke's registration is currently only active by virtue of these fitness to practise proceedings, and would otherwise have lapsed by reason of her non-payment of her registration fees during the period of her conditions of practice order. The panel therefore had regard to the NMC's guidance on 'Allowing orders to expire when a nurse or midwife's registration will lapse', specifically:

'In certain circumstances allowing a suspension or conditions of practice order to expire following a finding of current impairment may actually be the best way to protect the public from concerns about a nurse or midwife's practice.'

Taking this option is likely to be appropriate if:

- *the nurse or midwife's registration is only active because of the substantive order being in place,*
- *the nurse or midwife doesn't want to continue practising, and*

- *the public are protected because the panel have made a clear finding that the nurse or midwife's fitness to practise is currently impaired so that this can be drawn to the attention of any future decision-maker if the nurse or midwife attempts to re-join the register.*

If nurses and midwives don't pay their fee and complete revalidation, their registration would usually lapse. However, if a nurse or midwife is on a conditions of practice order, or a suspension order, their registration cannot lapse because of the existence of the order. If the panel decide to allow the order to expire, the nurse or midwife who has not paid their fee or completed revalidation would no longer be registered with us, and would not be able to practise.'

The panel considered that these circumstances applied in this case. It noted that Mrs Clarke has been a nurse for some 40 years without previous regulatory concerns. The panel was mindful that the charges found proved were serious. However, the panel noted that Mrs Clarke acknowledged her failures at an early stage and made an admission to the charges, and to the fact that they amounted to misconduct and that her fitness to practise was impaired, at the substantive meeting. [PRIVATE].

The panel was further mindful that Mrs Clarke has not worked as a nurse since 2018 and has not revalidated her registration. Her registration is therefore only being kept active by virtue of these fitness to practise proceedings. If the panel were to take no action and allow the current order to expire at the end of 28 October 2020 then this would result in the lapse of Mrs Clarke's registration. She therefore could not practise as a registered nurse. To re-join the NMC register she would have to successfully complete a Return to Practice course and then apply for readmission to the NMC register. The registrar, in considering her application, would also be able to take this panel's finding of current impairment into account and consider whether she had satisfactorily addressed the health issues which are currently preventing her from being able to practise safely and effectively without restriction.

In all the circumstances, the panel considered that to take no further action, allowing Mrs Clarke's registration to lapse, was the most appropriate and proportionate course of action in this case, whilst also balancing Mrs Clarke's interests and her expressed wish to retire

from the profession. The panel considered that the wider public interest considerations in this case were adequately addressed by this course of action, which would have the effect of bringing Mrs Clarke's nursing career to an end. In terms of public protection, the panel noted that, for reasons set out above, the public would be protected by allowing the order to lapse.

The panel did consider the other sanctions which were available to it. It considered that to impose a caution order would allow Mrs Clarke to continue to practise unrestricted which could leave the public exposed to a risk of harm. The panel next considered a further conditions of practice order. The panel was of the view that Mrs Clarke has been unable to comply with a conditions of practice order, and that she has stated that she no longer wishes to practise as a nurse. The panel determined that an ongoing conditions of practice order would not serve any useful purpose. The panel considered replacing the conditions of practice order with a suspension order but, in its view, it would be disproportionate given that Mrs Clarke has expressed her wishes for the future. The panel also considered a striking-off order but determined that this outcome would be disproportionate and punitive when public protection could be achieved by a less restrictive course of action.

Taking account of all of the above, the panel determined that the most appropriate and proportionate outcome, which achieved the panel's overarching objective of public protection and served the wider public interest, was to take no further action and allow the conditions of practice order to expire at the end of 28 October 2020. This will bring these fitness to practise proceedings to an end and, as a result, Mrs Clarke's NMC registration will lapse and she will no longer be able to practise.

This decision will be confirmed to Mrs Clarke in writing.

That concludes this determination.