

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

**Substantive Meeting**

**9 October 2020**

Virtual Hearing

**Name of registrant:** Sarah Louise Hogg

**NMC PIN:** 88A0810E

**Part(s) of the register:** Registered Nurse (Sub Part 1)  
Adult Nursing – April 1991  
Registered Midwife – February 1993

**Area of Registered Address:** Liverpool

**Type of Case:** Conviction

**Panel Members:** Clive Chalk (Chair, Lay member)  
Yvonne O'Connor (Registrant member)  
John McGrath (Registrant member)

**Legal Assessor:** Richard Ferry-Swainson

**Panel Secretary:** Caroline Pringle

**Mrs Hogg:** Present and represented by Megan Fletcher,  
instructed by Thompsons Solicitors

**Nursing and Midwifery Council:** Represented by Zainab Mohamed, Case  
Presenter

**Facts proved by admission:** All

**Fitness to practise:** Impaired (public interest only)

**Sanction:** Suspension order (9 months)  
*[Review of order not necessary in accordance  
with Article 29 (8A)]*

**Interim Order:** Not imposed

## **Details of charge**

That you, a registered nurse and midwife.

1. Were convicted on 6/11/2019 of causing serious injury by dangerous driving contrary to section 1 (a) of the Road Traffic Act 1988
2. Were convicted on 6/11/2019 of driving a motor vehicle with excess alcohol contrary to section 5 (1) ( a ) of the Road Traffic Act 1988.

And in light of the above your fitness to practice is impaired by reason of your conviction as set out in charges 1 and 2.

## **Decision and reasons on application under Rule 19**

At the outset of the hearing Ms Fletcher made an application for parts of the hearing to be held in private. She submitted that she would be referring to your health and that it would be appropriate to hold these parts of the hearing in private in order to protect your confidentiality and privacy. The application was made pursuant to Rule 19 of the Rules.

Ms Mohamed, on behalf of the NMC, did not object to the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there will be reference to your health, the panel determined to hold these parts of the hearing in private. It was satisfied that your right to privacy and confidentiality in respect of these matters outweighed the interests of the public or any other third party.

## **Background**

The events which led to your criminal convictions took place on 23 March 2019. You had attended a surprise birthday party on 22 March 2019, where you had been drinking. You took a taxi home from the party in the early hours of 23 March 2019. However, once home, you decided to leave the house again, this time getting into your car. While driving you lost control of your vehicle and crashed, hitting a 17 year old pedestrian. He suffered significant injuries, including a fractured skull and fractured spine, which required extensive hospital treatment. Fortunately, he has made a good recovery although his progress is still ongoing.

You were found to have 70 micrograms of alcohol in 100 millilitres of breath, which is more than twice the legal limit.

You referred yourself to the NMC on 10 October 2019, stating that you had been charged with drink driving and were likely to be charged with dangerous driving.

You appeared at Sefton Magistrates' Court on 6 November 2019, where you pleaded guilty to causing serious injury by dangerous driving, contrary to s1(a) of the Road Traffic Act 1988, and driving a motor vehicle with excess alcohol, contrary to s5(1)(a) of the Road Traffic Act 1988.

On 16 December 2019 you were sentenced to 12 months imprisonment in relation to causing serious injury by dangerous driving, and 4 months imprisonment in relation to driving with excess alcohol, to be served concurrently. You were also disqualified from driving for 2.5 years.

You are currently on probation licence, which is due to expire on 16 December 2020.

### **Admissions to the charges**

At the outset of the hearing, you admitted charges 1 and 2. Accordingly, the panel announced charges 1 and 2 as proved.

### **Submissions on impairment**

Having found the facts proved, the panel then moved on to consider whether your fitness to practise is currently impaired by reason of your conviction. There is no statutory definition of fitness to practise. However, the NMC has defined it as a registrant's suitability to remain on the register unrestricted.

You gave evidence to the panel. You told the panel that you have been a midwife for 27 years and enjoy being able to support women and families in such a personal and private moment.

You told the panel that, at the time of the incidents, [PRIVATE]

You also gave evidence about the events on 22 and 23 March 2019. You told the panel that it had been a surprise party for your birthday, and you had been drinking. Your husband left the party early without telling you, as he had to be up early in the morning. You went home later, taking a taxi. You told the panel that, due to your emotional state at the time, you were upset that he had left without you and, once home, you felt like you needed to "escape". You admitted that that you did not consider the fact that you had been drinking when you got into the car.

You gave evidence about the impact of your actions and subsequent convictions on your victim, his family, your colleagues, and the reputation of the professions. You told the panel that you had destroyed the lives of your victim and his family. You said that you thought about them every day and that the guilt and remorse you felt would stay with you forever. You told the panel that you were thankful that he was making a recovery, but recognised that this was due to the care he had received from the hospital and his rehabilitation team, and that it did not diminish the severity of your actions.

You also told the panel that you felt guilty about the impact on your colleagues and your employer, because your actions also reflect on them and you have caused them emotional distress. Finally, you told the panel that you recognise that your actions and convictions undermine the trust and confidence that the public expect of nurses and midwives. You said that you had embarrassed the profession and brought it into disrepute.

You told the panel that [PRIVATE].

[PRIVATE].

You have not worked as a registered nurse or midwife since the accident. However, since June 2020, you have been working as a senior carer in a residential home. This involves leading shifts, organising the workload and liaising with other healthcare professionals. You said that your employer is supportive and is fully aware of these NMC proceedings and the events which led to them. You told the panel that you enjoy the role and are happy that you are still able to work in the healthcare sector, but that you would like to return to midwifery in the future if given the opportunity.

Ms Mohamed, on behalf of the NMC, submitted that your conviction had breached a number of sections of the NMC Code of Conduct. She referred the panel to the case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin) and submitted that a finding of current impairment was required on public interest grounds in order to maintain professional standards and confidence in the profession.

Ms Fletcher submitted that a finding of current impairment on public protection grounds was not required as there was no suggestion that your actions had placed any patients at risk of harm, nor that you were likely to do so in the future. She submitted that the risk of repetition was highly unlikely given your insight, remediation and remorse. However,

Ms Fletcher submitted that you accept that your fitness to practise is currently impaired on public interest grounds.

### **Decision and reasons on impairment**

The panel next went on to decide if, as a result of your conviction, your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined it as a registrant's suitability to remain on the register unrestricted. The panel accepted the advice of the legal assessor, which included reference to *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin) and *CHRE v (1) GDC (2) Fleischmann* [2005] EWHC 87 (Admin).

The panel first considered the test adopted by Mrs Justice Cox in the case of *Grant* at paragraph 76:

*'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. ...'*

The panel was satisfied that this was not a case which gave rise to public protection concerns. Your conviction arose from actions in your private life which are unrelated to

your clinical practice. Although your victim sustained significant and serious injuries, there is no evidence before this panel that your actions on 23 March 2019 placed patients at a risk of harm. The panel was satisfied, from both the documentary evidence and your oral evidence, that you are unlikely to repeat your actions in the future. It was therefore satisfied that a finding of current impairment on public protection grounds was not required.

The panel did, however, consider that limbs (b) and (c) of *Grant* were engaged. It considered that your actions brought the nursing and midwifery professions into disrepute and breached fundamental tenets of the professions. They also breached aspects of the NMC Code of Conduct 2015, specifically:

***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*

*20.4 keep to the laws of the country in which you are practising*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to*

The panel considered that you had shown considerable remorse and insight into the impact of your actions on your victim, his family, your colleagues, and the reputation of the profession. You also have a robust support network in place and gave detailed evidence about how you would avoid any repetition in the future. The panel was therefore satisfied that there was no real risk of repetition in this case.

However, it also bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold 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 bore in mind that you have been convicted of two serious criminal offences which resulted in serious and

potentially fatal injuries to a young person. You are still serving your criminal sentence, which is not due to expire until 16 December 2020. The panel considered that, due to the seriousness of your conviction, a finding of current impairment was required to uphold public confidence in the professions and to send a message about the standards of behaviour expected of registered nurses and midwives. The panel also had regard to the principle in *Fleischmann* and considered that it would be inappropriate to allow you to return to unrestricted practice while you are still serving a criminal sentence.

The panel therefore determined that your fitness to practise is currently impaired on public interest grounds.

### **Determination on sanction**

The panel considered this case and decided to make a 9 month suspension order, to expire without a review.

In reaching this decision, the panel had regard to all the evidence before it, together with the submissions made by Ms Mohamed and Ms Fletcher.

In her submissions, Ms Mohamed outlined potential aggravating and mitigating factors. She submitted that, in the NMC's view, a 12 month suspension order was the appropriate and proportionate sanction which would adequately address the public interest.

Ms Fletcher submitted that a 12 month suspension order would be disproportionate. She referred the panel to a number of mitigating factors, including your insight and remorse, your health at the time, the steps you have since taken to address this, and the evidence of your good character and lengthy career. Ms Fletcher submitted that the public interest could be upheld by an order which lasts no longer than the remainder of your criminal sentence and suggested some potential conditions of practice.

The panel accepted the advice of the legal assessor who referred it to the NMC's Sanctions Guidance and the case of *Fleischmann*. The panel bore 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 Sanctions Guidance published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered that the aggravating factors in this case were:

- the seriousness of your conviction.

The panel considered that the mitigating factors in this case were:

- you self-referred to the NMC and immediately informed your employer;
- you pleaded guilty to the criminal offences and admitted the NMC charges;
- you have shown considerable insight, remorse and regret;
- you have provided numerous testimonials which attest to your good character;
- you have no previous criminal convictions;
- this is the first time that you have been referred to the NMC in a career of almost 30 years;
- you were experiencing health issues at the time, which you have since taken steps to address.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. Taking no further action would not mark the seriousness of your conviction or uphold the public interest. Taking no further action and allowing you to resume unrestricted practice would also be inconsistent with the principle in *Fleischmann*. The panel therefore decided that it would be neither proportionate nor 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 Sanctions Guidance, 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*'. The panel did not consider that your case is at the lower end of the spectrum of impaired fitness to practise and was of the view that the seriousness of your conviction required a more restrictive sanction than a caution order. The panel therefore concluded 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 your registration would be a sufficient and appropriate response. The panel noted that Ms Fletcher had suggested conditions relating to ongoing engagement with various healthcare professionals. However, the panel bore in mind that this was not a health case. While [PRIVATE], you have taken steps to manage this, such that the panel is satisfied that there is no real risk of repetition. There have also never been any concerns about your alcohol use or consumption. The panel bore in mind that, having found your fitness to practise impaired on public interest grounds alone, the purpose of sanction at this stage was to mark the public interest rather than to protect the public from any risks arising from your clinical practice or health. In these circumstances, the panel decided that a conditions of practice order would be insufficient to uphold the public interest and would serve no useful purpose.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order may be appropriate where the conduct:

*...is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):*

- *a single instance of misconduct but where a lesser sanction is not sufficient*
- *no evidence of harmful deep-seated personality or attitudinal problems*

- *no evidence of repetition of behaviour since the incident*
- *the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour*
- ...
- ...

The panel considered that your conviction represented a serious departure from the standards expected of registered nurses and midwives and impacted on the reputation of the professions. However, it also bore in mind that your conviction was an isolated incident of poor decision-making which occurred in your personal life. You are otherwise of good character, there have never been any other regulatory concerns about your practice, and you have demonstrated considerable insight, regret and remorse for your actions. You also [PRIVATE].

As such, the panel considered that your actions were not fundamentally incompatible with remaining on the register and that the public interest could be marked by a suspension order. The panel considered that imposing a striking-off order would be disproportionate in light of the mitigation set out above. It therefore decided that a suspension order would be the appropriate and proportionate sanction.

It therefore moved on to consider the length of the suspension order. It noted that the NMC was of the view that a 12 month order would be appropriate. Ms Fletcher, on the other hand, had submitted that an order which expired not long after the expiry of your criminal sentence in December 2020 would be sufficient to mark the public interest. The panel noted that your criminal sentence is due to expire in just over two months' time. However, the purpose of sanction is not to reflect a criminal sentence but to uphold professional standards and maintain public confidence. The panel decided that the serious nature of your conviction demanded a lengthier period of suspension. However, it was also mindful of the extensive mitigation in your case. It therefore determined that a 9 month suspension order would be the appropriate and proportionate sanction to uphold the public interest. It considered that this period of time properly reflected the

seriousness of your conviction but also took account of the mitigating circumstances, such as your considerable insight and remorse.

The panel considered that this order would mark the importance of maintaining public confidence in the profession, and send to the public and the profession a clear message about the standard of behaviour required of registered nurses and midwives.

Having imposed the suspension order to mark the public interest, and given that there are no public protection concerns in this case, the panel was satisfied that a review hearing prior to the expiry of this order is not required. The panel therefore decided to utilise its powers under Article 29(8A) of the Nursing and Midwifery Order 2001 and directs that the 9 month suspension order be allowed to expire without a further review hearing.

#### **Determination on Interim Order**

The panel considered the submissions made by Ms Mohamed that an 18 month interim suspension order should be made on public interest grounds.

Ms Fletcher submitted that an interim order would be disproportionate in this case, as there are no public protection concerns and the threshold for imposing an interim order on public interest grounds alone is high.

The panel accepted the advice of the legal assessor. He advised that the threshold for imposing an interim order on public interest grounds is high and referred the panel to *Sheikh v General Dental Council* [2007] EWHC 2972 (Admin).

The panel was mindful of its decision that there were no public protection concerns in this case and that it had imposed the substantive suspension order on public interest grounds alone. The panel considered the application for an interim order but concluded that the circumstances of this case did not meet the high bar required to impose an

interim order on public interest grounds alone. The panel did not consider this to be incompatible with its earlier decision on sanction.

The panel therefore decided that the substantive suspension order was sufficient to protect the public interest and that an interim order was not necessary.

That concludes this determination.

This decision will be confirmed to you in writing.