

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

**Substantive Hearing
18 September 2020**

Virtual Hearing

Name of registrant: Miss Nicola Joanne Rickards

NMC PIN: 12J0779E

Part of the register: Registered Mental Health Nurse (2014)

Area of registered address: England

Type of case: Misconduct

Panel members: Anne Owen (Chair, Registrant member)
John McGrath (Registrant member)
Jill Wells (Lay member)

Legal Assessor: Peter Jennings

Panel Secretary: Leigham Malcolm

Nursing and Midwifery Council: Represented by Mr Michael Bellis, NMC Case Presenter

Miss Rickards: Not present and represented by Mr Sam Oestreicher, of Unison

Consensual Panel Determination: Accepted

Facts proved: Charges 1

Fitness to practise: Impaired

Sanction: Caution Order (12 months)

Details of charge

That you a Registered Nurse while working as a Band 5, Staff Nurse on Priory Ward at Wotton Lawn Hospital:

- 1. On 28 June 2018 attended work whilst under the influence of alcohol.*

AND in light of the above your fitness to practice is impaired by reason of your MISCONDUCT.

Consensual Panel Determination

At the outset of this hearing, Mr Bellis, on behalf of the Nursing and Midwifery Council (NMC), informed the panel that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Miss Rickards.

The agreement, which was put before the panel, sets out Miss Rickards' full admissions to the facts alleged in the charge, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is further stated in the agreement that an appropriate sanction in this case would be a caution order for a period of 12 months.

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

That provisional CPD agreement reads as follows:

Miss Rickards is aware of the CPD hearing. Miss Rickards does not intend to attend the hearing and is content for it to proceed in her and her representative's

absence. Miss Rickards' representative will endeavour to be available by telephone should any clarification on any point be required.

The Nursing and Midwifery Council and Miss Nicola Joanne Rickards, PIN 12J0779E ("the parties") agree as follows:

1. Miss Rickards admits the following charge:

That you a Registered Nurse while working as a Band 5, Staff Nurse on Priory Ward at Wotton Lawn Hospital:

1. On 28 June 2018 attended work whilst under the influence of alcohol.

AND in light of the above your fitness to practice is impaired by reason of your MISCONDUCT.

Facts

2. Miss Rickards appears on the register of nurses and midwives maintained by the NMC as a Registered Nurse – Mental Health. Miss Rickards registered in November 2014.

3. On 17 July 2018, the NMC received a referral concerning Miss Rickards' fitness to practise from the Deputy Director of Nursing, at 2gether NHS Foundation Trust ('the Trust'). At the time of the referral Miss Rickards was working as a staff nurse on Priory Ward ('the Ward') at Wotton Lawn Psychiatric Hospital ('the Hospital').

4. As can be seen from the charge the misconduct relates to an incident on 28 June 2018. It is accepted by Miss Rickards that on 28 June 2018, she attended

work at the Hospital at approximately 07:45 while under the influence of alcohol. Miss Rickards was late for her shift as she had been due to commence at 07:00. On arrival Miss Rickards appeared to colleagues to be under the influence of alcohol. Colleagues challenged Miss Rickards' presentation and one colleague requested that she take an alcohol breath test, which was refused. After a colleague advised that the management team would soon arrive, Miss Rickards left.

5. The Trust suspended Miss Rickards pending investigation of this matter, and she was subsequently dismissed from the Trust on 9 November 2018.

6. [Private]

7. [Private]

8. Signed Witness Statements were obtained from:

- Ms 1 – Staff Nurse on the Ward at the material time.*
- Mr 2 – Staff Nurse on the Ward at the material time.*
- Ms 3 – Ward Manager at the Hospital at the material time.*

9. Ms 1 states that on 28 June 2018 Miss Rickards attended work approximately 45 minutes after the shift had started at 07:00. Ms 1 recalls that she did not immediately notice that Miss Rickards was intoxicated but when a colleague, Mr 2, asked her something she became suspicious. In particular Ms 1 recalls that Miss Rickards was writing really big letters with spelling errors. Furthermore she recalls that Miss Rickards was unusually quiet and when she spoke her words were slurred. Ms 1's statement confirms that Miss Rickards eyes were blood shot, glazed and drowsy looking.

10. Ms 1 recalls that Miss Rickards was confronted by Mr 2 and at that point Miss Rickards became confrontational and claimed to be hung over and not drunk. Ms 1 states that she asked how much Miss Rickards had drunk and initially she replied a couple of glasses of wine but then said a bottle. Miss Davis said that she advised Miss Rickards to go home with words along the lines of: 'I think you need to go hon' to which Miss Rickards replied that she was fine and would stay at work. However when Ms 1 pointed out that the ward manager would be arriving shortly Miss Rickards agreed to leave.
11. Mr 2 in his signed statement advised that on 28 June 2018 he received a text from Miss Rickards in which she said she would be late for the shift. He recalls that when she arrived at approximately 07:45 it was obvious that something was not right. He notes he could smell a strong scent of perfume and cigarettes with an underlying smell of alcohol.
12. Mr 2 recalls that Miss Rickards began to write a handover sheet but her handwriting was completely illegible; the letters were enormous compared to the box being written in. Mr 2 also describes difficulties in communicating as Miss Rickards was slurring her words and her eyes were not focusing. Mr 2 gives evidence that Miss Rickards admitted to drinking the night before even stating that she might still be drunk, but not to tell anyone. Mr 2 states that he and his colleague (Ms 1) attempted to challenge Miss Rickards and asked how much she had had to drink, but Miss Rickards kept changing her answer, first claiming to have drunk 2 glasses of wine, and later a whole bottle. Mr 2 states that they attempted to get Miss Rickards to leave, but she was not happy about this. He also notes that they attempted to have Miss Rickards take an alcometer test, but she became defensive and refused.
13. Ms 3 was not at the Hospital when the incident took place and arrived after Miss Rickards had departed. She however telephoned Miss Rickards at approximately 11am and recalls thinking she sounded intoxicated as her speech

was a little slurred. Ms 3 notes that she granted special leave and then met with Miss Rickards a couple of days after the incident whereupon Miss Rickards admitted to having been under the influence of alcohol and recognised she should not have attended her shift.

*14. In the response to regulatory concerns form, dated 12 September 2019, and in the Case Management Form dated 20 January 2020 Miss Rickards admitted to attending work under the influence of alcohol as charged (**Appendix 1**).*

Misconduct

15. Miss Rickards admits that the facts as set out in the charge above amount to misconduct in that her actions fell significantly short of the standards expected of a registered nurse.

16. Miss Rickards accepts that her actions breached the following paragraphs of The Code: Professional standards of practice and behaviour for nurse and midwives (2015) (“the Code”):

“Prioritise people

You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern...

4 Act in the best interests of people at all times

Preserve Safety

You make sure that patient and public safety is not affected...

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

Promote professionalism and trust

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 professions from patients, people receiving care, other health and care professionals and the public.

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

*17. With reference to the case of **Roylance v GMC** (No2) [2000] 1 AC 311 the parties agree that Miss Rickards' conduct fell far below the standards expected of a registered nurse in the circumstances of the case. The parties agree and aver that Miss Rickards' actions, in attending work whilst under the influence of alcohol, to be of the utmost seriousness.*

18. It is agreed that fellow registered nurses would consider Miss Rickards conduct on the day to be deplorable in all the circumstances.

19. It is agreed and acknowledged by Miss Rickards that it is not possible for a registered nurse to practice safely and effectively whilst under the influence of alcohol at work. Miss Rickards accepts that her conduct had the potential to cause significant harm to patients in her care where, she is expected to maintain a high degree of concentration at all times.

20. For the reasons above Miss Rickards agrees with the NMC that her actions at the material time amount to misconduct.

Impairment

21. The parties agree that the overarching objective in reaching a decision is the protection of the public. Public protection is defined as a real risk to patients and/or colleagues and/or other members of the public in the registrant continuing in the role. A vital part of public protection is encouraging people to use the services of nurses and midwives and in doing this, it is important that the Panel recognises its obligation to also uphold public interest. Public Interest includes:

- the need to declare and uphold proper standards of conduct and
- the need to maintain confidence in the profession and also in the NMC as a regulator.

22. 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 always 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. The Registrant admits and it is agreed that her fitness to practise is impaired by reason of her misconduct on public interest grounds. The Registrant acknowledges that her misconduct is unacceptable and that there is a need to declare and maintain proper standards and public confidence in the profession.

23. The parties have had regard for the judgement of Mrs Justice Cox in Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). 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.

24. Mrs Justice Cox commended the following as the appropriate test for panels:

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) Has in the past brought and/or is liable in the future to bring the professions 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 professions; and/or*
- d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

25. The parties agree that limbs a, b and c above are engaged in this case. The parties contend that the concerns identified in this case relate solely to Miss Rickards' professional conduct. There is no evidence of any patient suffering actual harm as a result of Miss Rickards actions in attending work whilst under the influence of alcohol, although it is considered there to always have been a

serious potential risk of harm. It is noted and accepted by Miss Rickards that she was prevented from performing her nursing duties by members of staff at the Hospital on 28 June 2018 due to her presentation and behaviour on the day.

26. It is agreed between the parties that attending work at a psychiatric hospital while under the influence of alcohol brought the profession in to disrepute and breached a fundamental tenet of the profession in that Miss Rickards failed to prioritise the patients in her care and did not act so as to uphold the reputation of the profession.

27. The NMC acknowledge that Miss Rickards has demonstrated insight into her actions at the material time. She made early admissions and has fully engaged with the regulatory process.

*28. During the Fitness to Practice process she has submitted 2 reflective pieces (**Appendix 2**) which the NMC considers collectively demonstrate insight, remorse and sufficient targeted reflection to exhibit that she does not pose a public protection risk.*

29. It can be seen from her reflective pieces that Miss Rickards understands and appreciates that her actions put patients at a risk of harm and that her actions would seriously undermine the reputation of her fellow professionals.

*30. Miss Rickards has most recently been working via an agency as a Senior Carer at Pennwood Lodge care home without incident. A reference from the Deputy Manager of the care home is attached at **Appendix 3** together with a reference from the agency. It can be seen from the reference that the Deputy Manager is fully aware of these proceedings and the nature of the regulatory concern. It is clear she has had no cause for concern during the time Miss Rickards has worked there.*

31. *The parties agree however that there would a high public interest in the consideration of this case and that a fully informed member of the public would be seriously concerned at Miss Rickards' actions in attending work whilst under the influence of alcohol. The parties therefore agree and submit that a finding of impairment on public interest grounds is necessary in this case to uphold the standards of the profession and to maintain confidence in the NMC as the nursing profession's regulator.*

Sanction

32. *The parties agree that the appropriate sanction in this case is a 12 month Caution Order.*

33. *The parties consider the following to be aggravating and mitigating factors in this case:*

Aggravating

- *In attending work as a nurse on a ward in a psychiatric hospital, whilst under the influence of alcohol, Miss Rickards demonstrated a disregard for patient safety as her actions had the potential to expose vulnerable patients in her care to a significant risk of harm.*

Mitigating

- *Miss Rickards made early admissions both at a local level and to the NMC.*
- *Miss Rickards has demonstrated insight into the events.*
- *Miss Rickards has been working in a care setting without further incident.*

34. *To take no further action would be inappropriate as the misconduct needs to be marked so as to remind the profession that it is never acceptable to attend work*

under the influence of alcohol. Furthermore to take no further action would not satisfy the public interest in this matter.

35. It is agreed that a caution order is the most appropriate and proportionate sanction in all the circumstances of this case given that it is averred above that Miss Rickards is currently impaired on public interest grounds only. A caution order will mark that the behaviour was unacceptable and must not happen again thus serving as a reminder to Miss Rickards and the profession as a whole while satisfying the public interest.

36. It is considered by the parties that a conditions of practice order would not be appropriate in this case as there has been no concerns raised about Miss Rickards clinical practice which are in need of assessment or retraining.

37. The parties do not regard a suspension order as being proportionate in this case given Miss Rickards level of insight into the regulatory concern. She has demonstrated that she understands what she did was wrong and the effects it could have had on the patients and colleagues. Furthermore, she has been working in a clinical setting without further report of incident.

38. Given that the facts, as admitted by Miss Rickards, constitute a one-off incident of which she has demonstrated sufficient insight and remorse, a striking off order would be wholly inappropriate and disproportionate in the circumstances of this case.

39. The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out at section 1 above, and the agreed statement of facts set out at section 2 above, may be

placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

The provisional CPD agreement ends here. It was signed by Miss Rickards and the NMC on 18 August 2020 and 26 August 2020 respectively.

Decision and reasons on the CPD

The panel decided to accept the provisional agreement.

Mr Bellis referred the panel to Miss Rickards' reflective statement and submitted that she reflected, in detail, on the seriousness of her actions. He submitted that Miss Rickards does not pose an ongoing risk to the public and there are no public protection concerns. However, given the seriousness of her misconduct, a finding of impairment is required on the grounds of public interest. In relation to a sanction, he further submitted that it was not necessary to restrict Miss Rickards' nursing practice, but her serious misconduct must be marked, and a caution order would serve this purpose.

Mr Bellis referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or reject outright the provisional CPD agreement reached between the parties. Further, the panel should consider whether the provisional CPD 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.

Mr Oestreicher, on behalf of Miss Rickards [Private] highlighted the absence of any continuing risk to the public.

The panel heard and accepted the legal assessor's advice.

The panel noted that Miss Rickards admitted the facts of the charge. Accordingly the panel was satisfied that the charge is found proved by way of Miss Rickards' admission, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Miss Rickards' fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Rickards, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel determined that Miss Rickards' conduct was sufficiently serious to amount to misconduct. By attending work under the influence of alcohol, possibly while her reasoning and judgement were impaired, Miss Rickards could have caused serious harm to patients in her care. Further, Miss Rickards put her colleagues in a difficult position, as she has acknowledged in her reflective statement.

In this respect, the panel endorsed paragraphs 15 to 20 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Miss Rickards' fitness to practise is currently impaired by reason of that misconduct. The panel took account of Mrs Rickards' detailed reflective statement as well as the positive references. It also bore in mind the strategies that Mrs Rickards has put in place to prevent her misconduct from occurring again. The panel determined that although Miss Rickards may not present an ongoing risk to the public, and her fitness to practise is therefore not impaired on the grounds of public protection, her misconduct must be marked by a finding of impairment on public interest grounds.

In this respect the panel endorsed paragraphs 21 to 31 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Miss Rickards' fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating feature, outlined in the agreement:

- In attending work as a nurse on a ward in a psychiatric hospital, whilst under the influence of alcohol, Miss Rickards demonstrated a disregard for patient safety. Her actions had the potential to expose vulnerable patients in her care to a significant risk of harm had she remained at work.

The panel also took into account the following mitigating features, also outlined within the agreement:

- Miss Rickards made early admissions both at a local level and to the NMC.
- Miss Rickards has demonstrated insight into the events.
- Miss Rickards has been working in a care setting without further incident.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of Miss Rickards' conduct. The panel decided that it would be neither proportionate nor in the public interest to take no 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.'*

The panel noted that Miss Rickards has shown insight into her conduct. She made admissions and apologised to this panel for her misconduct, showing evidence of genuine remorse. Miss Rickards has engaged with the NMC since the referral. The panel has been told that there have been no adverse findings in relation to Miss Rickards' practice either before or since this incident.

The panel considered whether it would be proportionate to impose a sanction restricting Miss Rickards' nursing practice, such as a conditions of practice order. The panel noted there are no ongoing public protection concerns in respect of Miss Rickards' nursing practice, and a sanction restricting Miss Rickards' nursing practice is not necessary for the protection of the public. It would be unduly punitive, would serve no useful purpose and it would not assist Miss Rickards' return to nursing practice. The panel further considered that a suspension order would be wholly disproportionate in this case. The panel also bore in mind that there is a public interest in an otherwise good nurse returning to nursing practice.

The panel agreed with the provisional CPD that a caution order would adequately protect the public. For the next 12 months her employer - or any prospective employer - will be on notice that her fitness to practise had been found to be impaired and that her registration is subject to this caution order. Having considered the general principles above and looking at the totality of the evidence, the panel has determined that to impose a caution order for a period of 12 months would be the appropriate and proportionate response. It would mark the importance of maintaining public confidence in the profession, and declare to the public and the profession the standards required of a registered nurse.

The panel noted that Miss Rickards' hearing has been delayed due to the Covid-19 pandemic and that these regulatory proceedings have unfortunately lasted much longer than anybody would have hoped.

At the end of this 12-month period the note on Miss Rickards' entry in the register will be removed. However, the NMC will keep a record of the panel's determination that her

fitness to practise had been found impaired. If the NMC receives a further allegation that Miss Rickards' 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 to Miss Rickards in writing.

That concludes this determination.