

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

**Substantive Order Review Meeting
23 August 2021**

Virtual Hearing

Name of registrant: Patricia Clarke

NMC PIN: 08B0344S

Part(s) of the register: Registered Nurse – sub part 1
Mental Health Nursing (7 September 2011)

Area of registered address: Ayrshire

Type of case: Misconduct

Panel members: Christina Mckenzie (Chair, Registrant member)
Jennifer Portway (Lay member)
Donna Hart (Registrant member)

Legal Assessor: Michael Bell

Panel Secretary: Max Buadi

Order being reviewed: Suspension order (12 months)

Fitness to practise: Impaired

Outcome: Strike off order to come into effect upon expiry of
the current order on 5 October 2021 in
accordance with Article 30 (1)

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that Mrs Clarke was not in attendance, nor was she represented in her absence. Notice of this meeting had been sent via email to an email address held on the NMC register on 14 May 2021.

The panel took into account that the Notice of Meeting provided, amongst other things, details of the substantive order being reviewed and the date and time of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Clarke has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a striking off order.

This order will come into effect upon expiry of the current order at the end of 5 October 2021 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the fourth review of a substantive order originally imposed by a panel of the Fitness to Practise Committee on 4 January 2018. At that hearing, a consensual panel determination agreement was considered, and a conditions of practice order for 18 months was imposed. That order was reviewed on 2 August 2019, and a suspension order for six months was imposed. The order was then reviewed on 6 January 2020 and a suspension order was imposed for 12 months. The order was last reviewed on 21 December 2020 and another suspension order was imposed for 8 months. The current order is due to expire at the end of 5 October 2021.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved, by way of admission, which resulted in the imposition of the substantive order were as follows:

That you, a registered nurse, employed by Mansfield Care, working at Belhaven Care Home [“the Home”]:

- 1. On 11 May 2016, did not document that Resident A had fallen in their daily record.*

- 2. On or after 24 August 2016, when Resident B returned to the Home from hospital, did not:*
 - i. Conduct a risk assessment;*
 - ii. Update their care plan;*
 - iii. Put in place a fluid chart;*
 - iv. Put in place an observation chart*

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

The third reviewing panel determined the following with regard to impairment:

The panel considered whether Mrs Clarke’s fitness to practise remains impaired.

The panel considered that there had been no material change of circumstances since the previous review hearing. It noted that Mrs Clarke had re-engaged with proceedings but this engagement had been minimal and she has not addressed the recommendations made by the previous panel. The panel noted that Mrs Clarke has stated in correspondence that she is currently working as a carer in the community but there was no further information to suggest that she has remediated the deficiencies found in her nursing practice or kept her nursing skills and knowledge up to date.

The panel therefore considered that a real risk of repetition remains and that patients would be placed at risk of harm if Mrs Clarke were able to practise as a nurse without restriction. The panel determined that a finding of impairment remains necessary on the grounds of public protection.

The panel bore 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. The panel also determined that a finding of impairment remains necessary on public interest grounds.

For these reasons, the panel finds that Mrs Clarke's fitness to practise remains impaired.

The third reviewing panel determined the following with regard to sanction:

The panel determined therefore that a suspension order is the appropriate sanction which would continue to both protect the public and satisfy the wider public interest. Accordingly, the panel determined to impose a suspension order for the period of 8 months which would provide Mrs Clarke with an opportunity to engage with the NMC proceedings and to demonstrate evidence of remediation, as well as provide information about her future intentions in relation to nursing. If Mrs Clarke feels she is in a position to provide this evidence sooner than 8 months she has the option of requesting an early review of the suspension order.

This suspension order will take effect upon the expiry of the current suspension order, namely the end of 5 February 2021 in accordance with Article 30(1).

Before the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- *Mrs Clarke's further meaningful engagement with these proceedings and/or her attendance at the review hearing;*
- *A clear statement from Mrs Clarke regarding her future intentions in relation to nursing;*
- *Mrs Clarke's employment history since January 2018;*
- *Any professional development;*
- *References from any employment undertaken, whether paid or unpaid.*

Decision and reasons on current impairment

This 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 has had regard to all of the documentation before it, including the NMC bundle.

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 the last reviewing panel found that there had been no material change of circumstances with regards to Mrs Clarke's case. At the current meeting the panel was of the view that there had been no change in circumstances.

This panel had no information from Mrs Clarke, since the last review hearing, to demonstrate that the concerns of the substantive panel had been addressed. She has not

provided a reflective piece or any evidence of insight into her misconduct nor has she provided any evidence that she has taken steps to remediate her misconduct.

In light of this lack of information and Mrs Clarke's lack of engagement, the panel determined that there remains a risk of harm to the public if she were permitted to practise as a nurse without restriction, and concluded that her fitness to practise remains impaired on the grounds of public protection.

The panel bore 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. The panel also determined that a finding of impairment remains necessary on public interest grounds.

For these reasons, the panel finds that Mrs Clarke's fitness to practise remains impaired.

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 or to impose a caution order but concluded that this would be inappropriate in view of the seriousness of the case and the risk to patients it had identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel next considered whether 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 bore in mind the seriousness of the facts found proved at the original hearing in 2018 and Mrs Clarke's failure to comply with the conditions of practice put in place as part of the original consensual panel agreement in 2018.

The panel bore in mind that Mrs Clarke had not engaged with these proceedings for a significant period of time. There was therefore no information before the panel to suggest that Mrs Clarke would be able or willing to comply with conditions and the panel concluded that practicable and workable conditions would not be possible to formulate.

The panel next considered imposing a further suspension order. The panel noted that Mrs Clarke had not demonstrated any insight into her previous failings. The panel was of the view that considerable evidence would be required to show that Mrs Clarke no longer posed a risk to the public. The panel determined that a further period of suspension would not serve any useful purpose in all of the circumstances.

The panel took account of the last reviewing panel's decision and noted the following:

“...The panel considered that a suspension order would protect the public and satisfy the public interest. It considered that it would give Mrs Clarke a final opportunity to engage meaningfully with these proceedings, and to demonstrate evidence of remediation and insight...”

The panel noted that the last reviewing panel made it clear that it was giving Mrs Clarke a final opportunity to engage with these proceedings meaningfully. Mrs Clarke has not taken this opportunity. The panel was satisfied that a striking off order was proportionate at this stage in light of a nurse who was not engaging with her regulator and who had been granted a significant period of time in which to do so. The panel also concluded that in view of Mrs Clarke's failure to engage, despite a number of periods of suspension, there is unlikely to be any change if a further finite period of suspension is imposed. Therefore, imposing a further period of suspension would not be in the public interest.

The panel determined that it was necessary to take action to prevent Mrs Clarke from practising in the future and concluded that the only sanction that would adequately protect the public and serve the public interest was a striking-off order.

This striking-off order will take effect upon the expiry of the current suspension order, namely the end of 5 October 2021 in accordance with Article 30(1).

This decision will be confirmed to Mrs Clarke in writing.

That concludes this determination.