

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

**Substantive Hearing
Friday 16 July 2021**

Virtual Hearing

Name of registrant: Miss Kate Victoria Loughlin

NMC PIN: 16B0395E

Part(s) of the register: Registered Nurse – Sub Part 1
Mental Health Nursing – (12 May 2016)

Area of registered address: Cheshire

Type of case: Conviction

Panel members: Yvonne O'Connor (Chair, Registrant member)
Tracey Chamberlain (Registrant member)
Richard Bayly (Lay member)

Legal Assessor: Robin Ince

Panel Secretary: Kevin Toskaj

Nursing and Midwifery Council: Represented by Tracey Brown, Case Presenter

Miss Loughlin: Present and not represented

Facts proved by admission: Charge 1

Fitness to practise: Impaired

Sanction: **Conditions of practice order (9 months)**

Interim order: **Interim conditions of practice order (18 months)**

Details of charge

That you, a registered Nurse:

- 1) Were convicted at Greater Manchester Magistrates Court on 11 September 2020 of driving a motor vehicle with excess alcohol.*

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

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Brown, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held in private on the basis that proper exploration of your case involves references to your health and personal circumstances. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you did not have any comments in relation to the application that any reference to your health and personal circumstances should be heard in private.

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 references to your health, the panel determined to hold the entirety of the hearing in private as proper exploration of your case is inextricably linked to your health. Moreover, the panel considered that the stem of today's proceedings concerns the possible implications of issues relating to your health.

Decision and reasons on facts

You admitted the charge and the panel found the charge proved by way of your admission under Rule 24 (5) of the Rules.

Background

You were convicted on 11 September 2020 of driving a motor vehicle with excess alcohol and received a custodial sentence of 12 weeks, suspended for 18 months. You were also required to carry out unpaid work for 40 hours, pay a surcharge of £128 to fund victim services and to pay costs of £85 to the Crown Prosecution Service. You were also disqualified from driving for 34 months and required to engage in 25 days of rehabilitation activity.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, 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 fitness to practise as a registrant's suitability to remain on the register unrestricted.

Evidence on impairment

You gave evidence under affirmation. You said you knew in June 2020 that you had done something wrong. Following the incident, you took time off work due to your remorse and later told the truth to both your employer and the NMC. You said you recognise that your actions endangered the public and could have possibly killed somebody. You stated that you never want to repeat that.

[PRIVATE]You next said that while you could have made many excuses [PRIVATE], you took full responsibility for your actions, and you [PRIVATE] repeated to the panel that you are remorseful and apologetic.

In response to questions from Ms Brown, you said the nature of your remorse is that you have a duty of care as a nurse. You said that your actions were unacceptable and shameful. You said that you never should have got into your car that night. When asked what impression of the nursing profession the public would have, you stated that your “*destructive*” actions would create a negative impression of yourself. You said nursing professionals and members of the public would not trust you.

You said that you have learnt that your actions put people in danger and that you would not put people in danger like this again. [PRIVATE]. You stated that you work in a stressful environment and that these meetings help you deal with this stress and have taught you to be calmer and more productive. You wished to reassure the panel that you were open and honest with both your employer and the NMC about your arrest and conviction.

[PRIVATE]

You next said that the events have changed you as a person. You stated that [PRIVATE] it frightens you to think about possibly repeating your actions. [PRIVATE]

[PRIVATE].

You told the panel that compliance with your sentencing order is currently ongoing with your probation officer and that you have 21 hours of voluntary work left to complete; you intend to take a week off work to complete this. Moreover, you said that you have paid the fees required by the Court and have completed 15 days of rehabilitation activity. In closing, you outlined for the panel your coping mechanisms, which include going to the gym, dog-walking, guided meditation, and enjoying relationships with friends and family.

Submissions on impairment

Ms Brown outlined the background to the case where you self-referred to the NMC on 7 June 2020 after you had been arrested. The panel was told that you had been referred by your employer to Occupational Health.

Ms Brown submitted that the concerns raised are serious due to the nature of your offending. She reminded the panel that your alcohol reading at the time of your arrest was high and that you have received a custodial sentence. Ms Brown next directed the panel to the documentation before it, which included: memorandum of conviction, Trust investigation report and occupational health documentation. She also drew the panel's attention to the references and testimonials you have brought before it.

Ms Brown addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. She referred the panel to the test for impairment first propounded by Dame Janet Smith in the Fifth Shipman Report, and subsequently endorsed by Cox J in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), (*Grant*) and concluding, has the registrant in the past and/or is liable in the future to do any of the following:

- 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 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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

Ms Brown submitted that your conviction was serious, that you had breached a fundamental tenet of the profession and that you had brought the nursing profession into disrepute. The panel were also referred to the judgements of *General Medical Council v Meadow* [2007] QB 462 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin) (*Cohen*). Ms Brown submitted that you had breached the standards set out in 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code). She stated that you have engaged with the NMC since your arrest, taken accountability for your actions, and have shown some insight.

Ms Brown stated that if no impairment was found, there would be no record on your registration. She invited the panel to make a finding of current impairment on public interest grounds due to the nature and seriousness of your conviction. Ms Brown submitted that a finding of impairment on public interest was necessary to uphold proper standards of conduct and maintain public confidence in the nursing profession and the NMC as its regulator. She submitted that actions which result in custodial sentences undermine confidence in the nursing professions.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included *Grant* and *Cohen*.

Decision and reasons on impairment

The panel first decided whether the conviction was serious enough to call your fitness to practice into question.

It noted Ms Brown's submissions that you had breached various parts of paragraph 20 of 'The Code: Professional standards of practice and behaviour for nurses and midwives

(2015)' (the Code). The panel agreed with Ms Brown that you had breached the following provisions:

'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, midwives and nursing associates to aspire to'

Further, it noted that your alcohol reading was almost four times the legal limit; that you had been sentenced to a term of 12 weeks' imprisonment (albeit suspended for 18 months); and that you had appreciated that you could have killed someone. The panel therefore concluded that your offending was serious enough to satisfy the ground of Conviction.

The panel next went on to decide, if as a result of the conviction, your fitness to practise is currently impaired.

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 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.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. 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.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'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 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*

The panel found that your conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding your insight, the panel considered that you have demonstrated insight into your issues with [PRIVATE] and that you recognise that you cannot have [PRIVATE]. The

panel noted that you recognise and understand the impact that the incident had on yourself and members of the public, however, it determined that your understanding of the impact the incident had on the nursing profession needs further reflection.

In its consideration of whether you have remedied your issues [PRIVATE], the panel was of the view that you have made significant progress. It took into account your proactive steps to promptly receive support [PRIVATE] and noted that you stated that you attend the meetings roughly five times a week.

The panel next considered if there is a risk of repetition. [PRIVATE]. Due to the nature of the concerns, the panel took the view [PRIVATE]. However, it considered that in the time since the incident, you have not repeated the conduct, [PRIVATE], receive support from your employer, and, you have told the panel of coping mechanisms that you will use to manage stress differently in the future. The panel bore in mind that there are no clinical concerns and therefore decided that a finding of impairment is not necessary on the grounds of public protection or in relation to your personal remediation.

The panel 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/protect the wider public interest, which 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 determined that, in this case, a finding of impairment on public interest grounds was required. The panel considered that the nature of your conviction and sentence were serious. It further noted that while you have said to have paid your sentencing fees in full, your conviction is unspent and your completion of the sentencing order is ongoing with your probation officer. The panel considered that your actions brought the nursing profession into disrepute, and public confidence in the nursing profession and the NMC as its regulator would be undermined should it not make a finding of current impairment. The

panel considered that a finding of current impairment was necessary to mark the seriousness of your conduct and uphold proper standards of conduct.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on public interest grounds.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 9 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

Submissions on sanction

Ms Brown informed the panel that in the Notice of Hearing, dated 10 June 2021, the NMC had advised you that it would seek the imposition of 6-12 month suspension order if it found your fitness to practise currently impaired. She referred the panel to the judgement of *Fleischmann v General Dental Council* [2005] EWHC 87 (Admin).

Ms Brown submitted that an aggravating factor includes driving a vehicle significantly over the legal alcohol limit, the potential for serious harm to the public, and that you received a custodial sentence. She outlined the mitigating factors which were: your guilty plea in court, no previous regulatory referral, your demonstrated insight into the regulatory concerns, and [PRIVATE].

You submitted that you would be devastated should the panel agree with the NMC sanction bid and impose a suspension order.

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

Having found your 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 features:

- You were convicted of driving whilst under the influence of alcohol and you were found to be nearly four times over the legal limit;
- There was a potential for serious harm to the public; and,
- You received a custodial sentence.

The panel also took into account the following mitigating features in addition to those identified by Ms Brown:

- You engaged with [PRIVATE] after the incident and still attend sessions regularly;
- You have said to have been abstinent from alcohol since June 2020;
- You are still employed and supported by your employer;
- You have provided positive testimonials from your employer and [PRIVATE];
- You accept full responsibility for your actions; and
- The incident was isolated and since that time, there has been no evidence of repetition.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, an order that does not restrict your practice would not be appropriate in the circumstances. 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 your 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 SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence; and*
- *Conditions can be created that can be monitored and assessed.*

The panel determined that it would be possible to formulate appropriate and practical conditions which would adequately address the public interest considerations in this case. The panel had regard to the fact that you said you have [PRIVATE] and that, other than this incident, you have had an unblemished career with no previous regulatory referral. The panel was of the view that it was in the public interest to monitor your continued progress whilst completing your criminal sentence. Besides awaiting the end of your period of suspended sentence, you have also to complete the Unpaid Work and Rehabilitation Activity requirements.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

In making this decision, the panel carefully considered the submissions of Ms Brown in relation to the sanction that the NMC was seeking in this case. However, the panel considered that it would be disproportionate to impose a suspension order in view of your insight and remediation of your issues [PRIVATE], the mitigating factors identified and the public interest in keeping a nurse, whose work is highly regarded, in practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards required of a registered nurse.

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

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. [PRIVATE]

2. [PRIVATE]

3. You must keep the NMC 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.

4. You must keep the NMC informed about anywhere you are studying by:

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

5. 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 on a private basis when you are working in a self-employed capacity.

6. You must tell your case officer, within seven days of your becoming aware of:
 - a. Any investigation started against you.
 - b. Any disciplinary proceedings taken against you.

7. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a. Any current or future employer.
 - b. Any educational establishment.
 - c. Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 9 months to allow you to complete your criminal sentence.

Before the order expires, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- A reference from your employer.

This will be confirmed to you in writing.

Interim order

As the conditions of practice order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the substantive conditions of practice sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Brown. She submitted that an interim order for a period of 18 months would be necessary to restrict your registration on an interim basis during the standard 28-day appeal period.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary to adequately address the public interest. The panel had regard to the seriousness of the facts found proved and the

reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.