

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

**Substantive Hearing
Thursday 28 July 2022
Thursday 1 December 2022**

Virtual Hearing

Name of registrant:	Ionut Claudiu Radu
NMC PIN:	16G0283C
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (9 July 2016)
Area of registered address:	Northamptonshire
Type of case:	Conviction
Panel members:	Penelope Titterington (Chair, Lay member) Judith McCann (Registrant member) Margaret Wolff (Lay member)
Legal Assessor:	Ben Stephenson
Hearings Coordinator:	Teige Gardner (28 July 2022) Jennifer Morrison (1 December 2022)
Nursing and Midwifery Council:	Represented by Matthew Cassells (28 July 2022) and Christopher Scott (1 December 2022), Case Presenters
Mr Radu:	Present and represented by Tasmin Malcolm (28 July 2022) and Libby Anderson (1 December 2022), instructed by the Royal College of Nursing (RCN)
Facts proved by way of admission:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Suspension order (12 months) without review

Interim order:

No order made

Details of charge

'That you, a registered nurse;

- 1) On 3 September 2020 at the Crown Court sitting in Northampton were convicted of Possessing a Firearm with Intent to Cause Fear of Violence, contrary to section 16A of the Firearms Act 1968.*

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

The charge concerns your conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rules 31(2) and (3) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules'). Further, you admitted to the charge.

Background

You were referred to the Nursing and Midwifery Council (NMC) on 7 July 2019 by Northamptonshire Police ('the Police'). The referral alleges that you threatened to shoot another motorist with an imitation firearm following a dispute over the other motorist obstructing your passage in his vehicle. The referral states that a firearm was recovered from your vehicle shortly after the incident when you were arrested. The Police subsequently advised the NMC that you were charged on 7 July 2019 as you had in your possession an imitation firearm with intent to cause another to believe that unlawful violence would be used. You admitted the charge and were sentenced to nine months imprisonment on 13 November 2020.

At the time of your conviction, you were employed, and had been since 5 August 2016, as a Registered Nurse at Cliftonville Care Home ('the Home'). The Home advised the NMC in an email dated 29 July 2019 that, since you began working at the Home, there had been no concerns raised about your clinical practice or wider conduct.

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.

Submissions on impairment

Mr Cassells moved on to the issue of impairment and addressed the panel on the need 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. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Cassells submitted your actions caused abject fear to your victim. He submitted that you escalated the otherwise everyday dispute into something entirely inappropriate. He submitted that your actions caused unnecessary emotional harm to your victim, and he questioned your decision making in this situation. He submitted that these situations are faced regularly in life, and if faced with a similar situation, questioned how you would act. He submitted that your actions, as seen in your conviction, are serious and a finding of impairment was necessary to protect the public. In addition, Mr Cassells submitted that a well-informed member of the public would find your actions fell seriously short of the standards expected of a registered nurse. He submitted that a finding of impairment is necessary on the grounds of public interest.

Mr Cassells further submitted that your actions were dishonest. He referred the panel to your initial police interview in which he submitted you intentionally misled the interviewing police officers. He further submitted that your reflective piece also highlights that you have limited insight into your conviction. He submitted that you attempt to blame the victim for your actions within your reflective piece. He submitted

further that, as you have limited insight, you have shown no remediation for your actions. He submitted that it was for the panel to decide whether you have also exhibited dishonesty through your actions.

Ms Malcolm submitted that you admit to impairment on the basis of your conviction. She submitted, however, that you do not admit to dishonesty and reminded the panel that dishonesty has not been charged in this case. She submitted that, at the time of the incident, you panicked, and you did make inaccurate statements to the police.

Regardless of this, she submitted that you pleaded guilty in court, and you accepted that your actions were wrong. Further, she submitted that the judge's closing comments on your case support the submission that you acted out of panic when making your police statement, which occurred just hours after the incident.

Ms Malcolm referred the panel to your positive testimonials and submitted that they indicate that you are a highly valued nurse and are important to your community. She submitted that this conviction arose in your personal life, not in the workplace, and you have had no complaints made regarding your practice as a registered nurse. She submitted that, prior to your conviction, you had no prior convictions or issues relating to your practice as a registered nurse. Regardless of this, she submitted that you do accept that you are currently impaired by way of your conviction.

The panel accepted the advice of the legal assessor, which included reference to the relevant legal principles, including the case of *Grant*.

Decisions and reasons on impairment

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Following Mr Cassells' submissions on dishonesty, the panel was of the view that all four limbs of *Grant* needed to be considered.

The panel first addressed the submissions on dishonesty. The panel took into consideration Mr Cassells' submissions and was of the view that you did give inaccurate statements to the police at the time of the incident. However, the panel noted that you were in a state of panic at the time, and this could have affected your decision making. Furthermore, the panel noted that in the judge's closing statement, he said that your police statements were incorrect as a result of the panic you had after being arrested. The panel also noted that you pleaded guilty to your conviction in court. In light of the above, and the fact that dishonesty has not been charged, the panel determined that it would not consider dishonesty as a factor in its decision making on impairment.

The panel then considered which areas of the Code you had breached through your conviction. The panel was of the view that the following areas are relevant:

'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 about how your behaviour can affect and influence the behaviour of other people

20.4 – Keep to the laws of the country in which you are practicing

20.5 – Treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'

The panel was of the view that your actions were extremely serious, caused emotional harm to your victims and fell seriously short of the standards expected of a registered nurse. The panel did, however, note that this incident occurred outside of your place of work. It noted that there have been no clinical concerns raised regarding your practice. It took into consideration the testimonials you provided and was of the view that the risk you pose to the public within a clinical environment is limited. The panel concluded that your conduct, as set out in your conviction, was a single incident that occurred several

years ago, with no previous offences or offences since. Therefore, the panel determined that you are not currently impaired on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC: 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 was of the view that you are impaired on the grounds of public interest. The panel determined that a well-informed member of the public would be concerned to find that a nurse with a serious conviction for an offence that caused emotional harm to members of the public and resulted in a significant prison sentence had not been found impaired. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the grounds of public interest.

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

The hearing adjourned on 28 July 2022 and resumed on 1 December 2022.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and to the NMC's published guidance on sanctions ('the SG'). The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Scott informed the panel that in the original Notice of Hearing, dated 23 June 2022, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired. With reference to the SG, Mr Scott submitted that a previously unblemished career is likely to be of limited relevance in these proceedings. He further submitted that in the Crown Court, you had accepted through your barrister that your conviction was likely to lead to your removal from the register, and although it was expressed as a point of mitigation to avoid immediate custody, this was unsuccessful. Mr Scott referred to the sentencing judge's remarks, submitting that they encapsulated the salient issues in this case:

'This is a serious offence and an immediate sentence of imprisonment is necessary. People who produce firearms, whether real or imitation, deliberately in public and then use them to frighten somebody must receive an immediate sentence of imprisonment.'

Mr Scott submitted that whilst in your reflective piece, you stated that you had made a mistake, your actions were in fact not negligent or careless. Furthermore, whilst they may be something you now regret, Mr Scott submitted that they were nonetheless deliberate, as noted by the sentencing judge. He further submitted that your reflective piece focused on the impact the proceedings had on you, rather than the impact on the reputation of the nursing profession. Mr Scott submitted that on the available evidence, your insight was poor, and you did not appreciate the gravity of what you had done.

Mr Scott submitted that nothing less than a striking off order would address the seriousness of this case and maintain public confidence in the profession. He submitted that a conditions of practice order would be inappropriate, as your conviction is unrelated to your clinical practice, no public protection concerns have been identified, and no realistic conditions could be formulated to address the issues at stake. Mr Scott submitted that your conduct leading to your conviction is fundamentally incompatible with remaining on the register, and as a result, a suspension order would be inappropriate.

With reference to *Bolton v Law Society* [1994] 1 WLR 512, Mr Scott submitted that personal mitigation was of limited value to these proceedings, and:

‘The reputation of the professions is more important than the fortunes of any individual member of those professions. Membership of a profession brings many benefits, but that is part of the price.’

Ms Anderson, on your behalf, then submitted that the panel was not bound by the decision of the Crown Court, and whilst the submissions made by your barrister at your sentencing hearing were correct and appropriate about the possibility of you being struck off the register, you would like the chance to ask for a lesser sanction, as is your privilege.

Ms Anderson submitted that your conduct was not fundamentally incompatible with remaining on the register and invited the panel to impose a suspension order. With reference to the SG, she submitted that whilst serious, your actions were a single incident of misconduct, had occurred several years ago, and were a momentary lapse of judgement on one day. She submitted that you had not been charged with dishonesty or with harming patients, and you did not pose a risk of repetition.

Ms Anderson submitted that in your reflective piece, you acknowledged that your actions were a mistake and stressed that they would not happen again. She invited the panel to consider that English is your second language when considering the wording of your statement and submitted that you have shown insight into the impact of your actions on the profession. You also have accepted the criminality of your actions and pleaded guilty at the Crown Court and accepted the NMC charge at an early stage.

Ms Anderson referred to the character references before the panel, submitting they showed that you were a highly valued nurse and an asset to the community, as well as providing a more accurate indication of your true character. She outlined your family circumstances and informed the panel that you were currently working as an HGV driver, but would like to return to nursing. Ms Anderson submitted that you had been punished by the criminal justice system and had been allowed to rehabilitate, and would

like the NMC to offer you the opportunity to rehabilitate into the profession. She submitted that there was a public interest in allowing a skilled, valued nurse to return to the profession.

In response to the panel's questions, Ms Anderson informed the panel on your behalf that you now understand that the victims of your crime would not only have been scared at the time of the incident, but that they may continue to experience fear in the future when in a car. You knew that you should not have responded with threats of violence, and if you were in a similar situation again, you would stay calm.

You also told the panel via Ms Anderson that you realise that the public would not expect a nurse to have a firearm. The first thing the public would think of when they think of a nurse is medical care, and your conviction flies in the face of that. You accepted that patients may have a reason to feel unsafe in your presence, but you hoped that they would realise your actions were the result of a momentary loss of self-control and that everyone makes mistakes. However, you knew that what you did was wrong and believed that whatever decision the panel makes will be fair. You want to return to nursing and hope that you will be given the chance to do so.

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 found that there are no specific aggravating factors, but have taken the view that your conviction, nonetheless, is extremely serious.

The panel considered the following mitigating factors:

- You pleaded guilty in the Crown Court and admitted to the regulatory charge at an early stage.
- You have shown insight and remorse for your actions.
- Your actions were a one-off occurrence that appeared to result from an instant lapse of judgement, and you have not repeated such conduct since.
- The panel has had sight of positive testimonials from a range of people who are aware of the charge and your criminal conviction. They support the position that your behaviour was out of character for someone who is otherwise a valued nurse.

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 SG 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 considered that your actions leading to your conviction were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 an appropriate and proportionate response. As your conviction is unrelated to your clinical practice and no public protection concerns have been identified, the panel was not satisfied that workable conditions could be formulated to address the issues at stake. Furthermore, the panel concluded that placing conditions on your registration would not address the seriousness of the case and uphold the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *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 found that these factors did apply in this case. However, the seriousness of the incident did warrant consideration of a striking off order. It considered the following factors:

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel acknowledged the gravity of your offence, which caused emotional harm to your victims and resulted in a custodial sentence of nine months. However, in all the circumstances, the panel concluded that a striking off order would be disproportionate, given the insight and remorse shown, and the fact that this was a single incident that was out of character for someone who is otherwise a valued nurse. The insight and remorse shown has included a reflection on how the victims felt at the time, how they might feel in the future as a result of your conduct, and on the impact of your behaviour on the reputation of the profession. You have given examples of how you have managed similar potential incidents of road rage differently in your work as an HGV driver. You have also acknowledged the impact your actions may have on patient confidence and are willing to accept whatever decision the panel makes as fair.

The panel also considered that your actions were not premeditated or sustained but appeared to have resulted from a momentary lapse of judgement, albeit serious. It was satisfied that the risk of repetition was low, and considered that the criminal proceedings, your custodial sentence and these regulatory proceedings have had a salutary effect on you.

The panel was mindful of the importance of maintaining public confidence in the profession and sending to the public and the profession a clear message about the standard of behaviour required of a registered nurse. It has balanced this against the public interest in enabling highly regarded and skilled nurses to return to practice.

Balancing all of these factors, the panel considers that public confidence in nurses can be maintained without your permanent removal from the register. Further, striking off is not the only sanction which is sufficient to protect patients and members of the public, and to maintain professional standards. The panel considers that a suspension order of the full 12 months would be the appropriate and proportionate sanction to mark the seriousness of your actions that resulted in your conviction.

The panel noted the hardship such an order may cause you. However, this is outweighed by the public interest in any event.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect, it found your fitness to practise impaired on the grounds of public interest.

In accordance with Article 29(8A) of the Nursing and Midwifery Order 2001 ('the Order'), the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the

substantive order will declare and uphold proper professional standards. Accordingly, this substantive order will expire without review.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, or until the conclusion of any appeal that is lodged, 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 is in your own interests until the substantive sanction takes effect.

Submissions on interim order

Mr Scott informed the panel that he would not be making an application for an interim order. He submitted that in the light of the panel's finding of impairment in the public interest only, as well as its decision that a review of the substantive order is not necessary under Article 31(8A), the grounds for an interim order are not made out. Mr Scott submitted that the bar for imposing an interim order in the public interest alone is high, and this bar has not been met. He submitted that an interim order would only serve to prolong the period of suspension by one month.

Decision and reasons on interim order

The panel accepted the advice of the legal assessor.

The panel accepted Mr Scott's submissions on this point. It determined that in the light of its previous findings, the high bar for imposing an interim order in the public interest alone has not been met. Accordingly, it has decided not to impose an interim order to cover the length of any appeal that may be lodged.

That concludes this determination.