

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

**Substantive Hearing  
Monday 4 July 2022**

Virtual Hearing

**Name of registrant:** **Simbarashe Chiimba**

**NMC PIN:** 19A1477E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Adult Nursing – October 2019

**Relevant Location:** North Northamptonshire

**Type of case:** Conviction

**Panel members:** Deborah Jones (Chair, lay member)  
Dorothy Keates (Registrant member)  
Kevin Connolly (Lay member)

**Legal Assessor:** Michael Levy

**Hearings Coordinator:** Ruth Bass

**Nursing and Midwifery Council:** Represented by Assad Badruddin, Case  
Presenter

**Mr Chiimba:** Present and represented by Deborah  
Tompkinson, Counsel instructed by Thompsons  
Solicitors

**Facts proved:** Charge 1

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** **Suspension order - without a review (6  
months)**

**Interim order:** **Interim suspension order (18 months)**

## **Details of charge**

*That you, a registered nurse;*

- 1) *On 24 May 2021 at the Magistrates Court sitting in Northamptonshire were convicted of Dangerous Driving contrary to section 2 of the Road Traffic Act 1988.*

*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 partly in private**

At the outset of the hearing, Ms Tompkinson, on your behalf, made an application for matters pertaining to health in this case, to be held in private. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Badruddin, on behalf of the Nursing and Midwifery Council (NMC), indicated that he supported the application to the extent that any reference to health 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 reference to the health of individuals, the panel determined to hold such matters in private as and when such issues arose.

## **Decision and reasons on facts**

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 Rule 31 (2) and (3) of the Rules.

## **Background**

The NMC received a referral on 10 June 2020 from Northamptonshire Police.

You were convicted as a result of an incident on 13 May 2020 where you were driving a motor vehicle, and collided into a residential property at approximately 01:00 hours where children and their parents had been asleep. The damage to the property was extensive enough to alter the structural reliability of the property resulting in parts of the home being unusable and the property suffering from large internal cracks. The insurance company quantified the damage, as identified by a quantity surveyor's report, to amount to £78,796.36.

A witness to the collision saw the vehicle you were driving accelerating down the road and crashing into the house at high speed. The evidence from the witness was that you were driving at 60-70 miles per hour in a 30 mile per hour zone. There was CCTV evidence of the incident which showed you driving through a zebra crossing at some speed.

Following the conclusion of the police investigation you were charged by the Crown Prosecution Service with the offence of Dangerous Driving contrary to section 2 of the Road Traffic Act 1988. You pleaded guilty on 24 May 2021.

Due to the seriousness of the offence the Magistrates on the 24 of May did not have sufficient sentencing powers and your case was therefore committed to Northampton Crown Court for sentencing on 2 July 2021. The Recorder at Northampton Crown Court

made it clear that your actions were serious and could have easily resulted in the death of people including young children. However, the Recorder took into consideration a number of mitigating factors: this being your first criminal offence; you had worked as a registered nurse throughout the COVID-19 pandemic; others considered you as being a credit to your profession; you were credited with having saved the life of a child by your prompt actions in your professional capacity. The Recorder therefore took what he described as an exceptional course of action and sentenced you to a 9 month custodial sentence, suspended for a period of 24 months, a rehabilitation activity requirement of 10 days and a 12 months disqualification from driving subject to you passing an extended test.

### **Fitness to practise**

### **Submissions on impairment**

Mr Badruddin invited the panel to take the view that your actions had amounted to a breach of 'The Code of professional standards of practice and behaviour for nurses 2015' (the Code) and set out the sections which he deemed applicable.

Mr Badruddin submitted that your conduct had fallen significantly below that which is expected of a registered nurse, and amounted to misconduct as your actions raised fundamental concerns regarding your position as a registered professional.

He further submitted that your conviction demonstrated a sufficiently serious offence, in that you knowingly took control of a car after consuming alcohol, sped down a residential road and crashed into a family home placing the lives of members of the public, including children, at risk.

Mr Badruddin reminded the panel of 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) (*Grant*). He submitted that the first 3 limbs of *Grant* were engaged.

Mr Badruddin submitted that your custodial sentence undermined trust and confidence in the profession, with the effect that patients who are aware that you are still subject to a suspended sentence of imprisonment, could be deterred from accessing care provided by you, which could place those patients at an unwarranted risk of harm. He further submitted that the current suspended sentence of imprisonment brought the profession into disrepute, and that your actions had breached fundamental tenets of the profession.

Mr Badruddin referred the panel to the case of *Fleischmann* [2005] EWHC 87 (Admin) (*Fleishmann*) and invited it to find impairment on both public protection and public interest grounds. He submitted that the general principle that a practitioner who has been convicted of a serious criminal offence should not be permitted to resume practice until he has satisfactorily completed his sentence, in order that public confidence in the profession is to be maintained, was applicable.

Mr Badruddin further submitted that the underlying conduct leading to your conviction is not easily remediable and has not been remediated due to your ongoing suspended sentence.

Ms Tompkinson, on your behalf, referred the panel to the NMC's guidance on context and Fitness to Practise. She submitted that the panel needed to look beyond the actions of the individual and understand the culture and what went wrong. She reminded the panel that you were a newly qualified nurse who was working with patients suffering from COVID-19 at the start of the pandemic, when nursing colleagues with far more experience than you were fearful of the possible consequences and of catching the virus and spreading it to their own families. At the time you lived at home with your family [PRIVATE] and this caused you greater stress and anxiety, such that you tried to avoid being at home as much of possible on your days off.

Ms Tompkinson submitted that the offence is not one that goes to trustworthiness in the professions and did not bear upon your clinical practice.

She emphasised that the principle set out in the case of *Fleishmann* related to a case involving child pornography, and therefore the remarks relating to an ongoing sentence should be taken in context with the sort of criminal offence which had caused direct harm to children. She submitted that in your case no harm was caused to patients.

Ms Tompkinson submitted that the fact you were driving too fast did not make you a bad nurse and asked the panel to bear in mind the context. She submitted that you did not normally drive fast, were not naturally inclined to flaunt the law, and were concerned about others. She referred the panel to the Recorder's positive sentencing remarks, and your probation officer's positive testimonial: both were of the view that you were unlikely to re-offend.

Ms Tompkinson referred the panel to various passages within your witness statement and reflective piece and submitted that you had shown both insight and remorse. She submitted that you had not put patients at an unwarranted risk of harm and were unlikely to do so in the future. She further submitted that public confidence in the profession would not be undermined if a fully informed member of the public knew the full facts of your case.

Ms Tompkinson submitted that the public does have a high expectation of nurses but did not expect them to be perfect. She submitted that your actions were out of character, you had no previous issues, and was not expected to repeat the behaviour. She submitted that you had not breached a fundamental tenet of the profession such as the duty to maintain protect patients or professional boundaries, and that you were remorseful for your actions and had learnt a lot since the incident.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Grant, Fleishmann, and R (on the application of Low) v GOC [2007] EWHC 2839 (Admin)*.

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

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 *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/their fitness to practise is impaired in the sense that S/He/They:*

- 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) ...'*

The panel found that limbs b and c of *Grant* were engaged by virtue of your conviction in driving at speed in a residential area, causing significant damage to residential property and endangering the lives of the occupants, as well as your own.

The panel had regard to your oral evidence, your witness statement, and your written reflective piece. It was of the view that you had demonstrated a good level of insight and genuine remorse for your actions, demonstrating a good understanding of why what you did was wrong and how this impacted negatively on the reputation of the nursing profession.

The panel further had regard to the positive character references provided by your colleagues, noting in particular a reference from your current line manager that *'I have found Simba to be honest, reliable & professional. He is highly thought of by both colleagues & patients in his care. Simba...has expressed remorse for his actions. I do hope that this lapse in judgement by a young man who provides a great service to the community will not prevent him from continuing with this.'* Based on the evidence before it, the panel was satisfied that there were no issues with regard to your clinical practice.

It had particular regard to the progress report provided by your probation officer dated 23 June 2021 which states:

*'Compliance to date has been excellent. Mr Chimba (sic) has engaged in offence focused work, discussing issues around thinking & behaviour, attitudes and victim empathy. Mr Chimba (sic) was keen to engage in the Restorative Justice (RJ) process and met with Northamptonshire Voice who lead all RJ conferences however, it was established that the harmed party did not want to engage and the process was therefore unable to proceed.*

*I have found Mr Chimba (sic) to be remorseful for the offence and he has been able to identify the reasons that led to the offending. I would consider Mr Chimba (sic) to be an engaging participant in our meetings and someone who has learnt from past mistakes. Mr Chimba (sic) is a pleasant and engaging young man who I have no doubt, will be unlikely to enter the criminal justice system again.'*

The panel noted that you had wished to engage with the restorative justice process, and that the probation officer and Crown Court Recorder were of the view that you were very unlikely to repeat such matters. Considering all of the above the panel was of the view that the risk of repetition was low. It therefore found that your fitness to practise was not impaired on public protection grounds.

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. It had regard to the context, being that you were a newly qualified nurse

working at the start of the COVID-19 pandemic when there were a lot of unknown factors regarding the virus. However, the panel was of the view that your conduct in driving at such speed within a residential area and to cause such a level of damage to a family home, needed to be marked. It was of the view that you had placed the lives of four people, including children, at risk as a result of your actions, and also had put your own life in danger. The panel was of the view that your conduct breached fundamental tenets of the nursing profession and brought its reputation into disrepute. This needed to be marked so as to maintain confidence in the nursing profession and uphold the standards expected of a registered nurse.

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

### **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 Sanctions Guidance (SG) and the legal advice. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating feature:

- This was a serious offence which resulted in a custodial sentence, albeit suspended.

The panel also took into account the following mitigating features:

- Your early admission to the charge

- You have shown insight and remorse, and attempted to engage with the restorative justice programme
- You have continued to work without restriction throughout the NMC's investigation of the charge, and up until now.

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 not be 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 misconduct was 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 a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account that your clinical practice was not in question, and as such was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case.

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 considered your conduct in this case to be very serious. However, having considered the SG, the panel was satisfied that a suspension order was the appropriate order in this case given that this was a single incident, which is unlikely to be repeated, there is no evidence of harmful deep-seated personality or attitudinal problems, and you have shown good insight and genuine remorse for your actions. It also took into account the mitigation in this case, together with the circumstances and context surrounding the COVID-19 pandemic, and was satisfied that a suspension order was the appropriate order.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and the mitigation provided, the panel concluded that it would be disproportionate.

Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel was of the view that a 6 month suspension order would reflect the seriousness of the conduct in this case. It had regard to the case of *Fleishmann* and was of the view that the risks presented in *Fleishmann* were significantly different to the circumstances of your case. As such, the need for your criminal sentence to conclude was not required in this instance. As the sanction is addressing public interest only, the panel determined that a 6 month suspension order without a review was the proportionate and appropriate order.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of 6 months was appropriate in this case to mark the seriousness of your conduct.

This will be confirmed to you in writing.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Badruddin. He submitted that an interim order was necessary on public interest grounds and requested an 18 months interim suspension order.

The panel also took into account the submissions of Ms Tompkinson. She submitted that 6 months was sufficient to protect the NMC in the event of an appeal.

### **Decision and reasons on interim order**

The panel was satisfied that an interim order is necessary in 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 an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due so as to allow any appeal.

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

That concludes this determination.