

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

**Substantive Meeting
9 and 10 May 2022**

Virtual Meeting

Name of registrant:	Stephanie Louise Atkinson
NMC PIN:	89A1948E
Part(s) of the register:	Registered Nurse – Adult Nursing
Relevant Location:	Barnsley
Type of case:	Misconduct/Conviction
Panel members:	Rachel Childs (Chair – Lay member) Helen Chrystal (Registrant member) Barry Greene (Lay member)
Legal Assessor:	James Holdsworth
Hearings Coordinator:	Vicky Green
Facts proved by conviction:	1
Facts proved by admission:	2, 3 and 4
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting (the Notice) had been sent to Miss Atkinson's registered email address on 4 April 2022.

The panel took into account that the Notice provided details of the allegations, that the meeting will take place on or after 9 May 2022 and the nature 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 Miss Atkinson has been served with the Notice 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).

Having had sight of the charges and all of the evidence in this case, the panel was satisfied that it was appropriate for this case to be considered by way of a meeting. It particularly took into account the fact that Miss Atkinson had herself requested that her case should be considered at a meeting rather than a hearing.

Details of charge

That you, a registered nurse,

1. At South Yorkshire Magistrates Court, on 16 October 2019, were convicted of Assault Occasioning Actual Bodily Harm, contrary to section 47 of the Offences Against the Persons Act 1861.
2. Did not disclose the conviction set out in charge 1 to your employer, NHS Professionals.
3. Did not disclose the conviction set out in charge 1 to the Nursing and Midwifery Council.

4. Your actions as set out at charges 2 and/or 3 were dishonest in that you knew you had a duty to inform NHS Professionals and/or the Nursing and Midwifery Council of your conviction and by not doing so you were seeking to avoid the potential consequences of the conviction coming to their attention.

And in light of the above, your fitness to practise is impaired by reason of your conviction as set out in charge 1, and your misconduct as set out in charges 2, 3 and 4.

Decision and reasons on facts

Charge 1 concerns Miss Atkinson's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that charge 1 is found proved in accordance with Rule 31 (2) and (3).

In respect of charges 2, 3 and 4, the panel noted Miss Atkinson's written responses in which she has made full admissions to these charges. The panel therefore finds charges 2, 3 and 4 proved in their entirety, by way of Miss Atkinson's admissions.

Background

On 24 November 2018, following a disagreement with a 70 year old female (Person A) at the Trades Working Men's Club in Barnsley, Miss Atkinson pushed Person A to the floor. The assault resulted in Person A sustaining a fracture to the right neck of her femur which resulted in her needing an operation. Following this incident, Miss Atkinson was subject to a police investigation and she was subsequently charged with assault occasioning actual bodily harm.

On 16 October 2019 Miss Atkinson attended Barnsley Magistrates' Court and pleaded guilty to assault occasioning actual bodily harm. She was subsequently sentenced on 20 November 2019. During sentencing, it was noted that the offence was so serious because Person A was elderly and considered to be vulnerable. Miss Atkinson was sentenced to 26 weeks imprisonment which was suspended for 12 months.

On 5 February 2020, the NMC received a referral about Miss Atkinson from a member of the public. This matter, whilst separate from the concerns in this case and closed during screening, triggered the NMC to undertake a Police National Computer (PNC) check during its initial investigations. This PNC check returned information about Miss Atkinson's conviction. This conviction had not been disclosed to the NMC by Miss Atkinson and, as a consequence, an 'Article 22(6)' referral was opened by the NMC in June 2020.

Miss Atkinson commenced employment with NHS Professionals on 3 August 2019 as a 'Flexible Worker'. During the registration process Miss Atkinson failed to disclose the police investigation to her employer. Further, she did not inform them of her subsequent conviction on 16 October 2019. NHS Professionals were not aware of Miss Atkinson's conviction until the Trust that Miss Atkinson was working at forwarded an email from the NMC dated 6 March 2020.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Miss Atkinson's fitness to practise is currently impaired by reason of her conviction in respect of charge 1.

In respect of charges 2, 3 and 4, the panel also considered whether the facts found proved amount to misconduct and, if so, whether Miss Atkinson's fitness to practise is currently impaired. 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct in respect of charges 2, 3 and 4. Secondly, only if the facts found proved amount to misconduct, the panel must

decide whether, in all the circumstances, Miss Atkinson's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The panel had regard to the NMC's written submissions as set out in the statement of case:

'Conviction/ Misconduct

At the time of the incident, the 2018 Code of Practice was in force.

We consider the following provision(s) of the Code have been breached in this case;

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

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

As per the NMC Code of Conduct, the Registrant is required, as a registered nurse, to keep to the laws of the country and notify the NMC and her employer of any convictions received.

Impairment

We consider the following questions from the case of Grant can be answered in the affirmative both in respect of past conduct and future risk:

- 1. ...*
- 2. The Registrant in the past brought and/or is liable in the future to bring the nursing profession into disrepute; and/or*

3. *The Registrant in the past committed a breach of one of the fundamental tenets of the nursing profession and/or is liable to do so in the future*

4. *The Registrant in the past acted dishonestly and/or is liable to act dishonestly in the future.*

We consider the Registrant has displayed limited insight.

We take this view because although the offence was serious enough to warrant a suspended custodial sentence, the Registrant's reflection has been superficial. She has told the NMC that she is very sorry that the offence took place. The Registrant says she was "in the wrong place at the wrong time" and has asserted that she will not repeat the offence.

In respect of the failure to report the conviction to the NMC and employer, the Registrant says that she feared losing a job that she loved and the loss of income.

The Registrant has not worked since 6 March 2020.

We consider there is a continuing risk to the public due to the Registrant's lack of full insight.

We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behavior [sic]. The Registrant's conduct engages the public interest because her actions resulted in a criminal conviction for a serious offence warranting a suspended custodial sentence. The Registrant's dishonest failure to inform the NMC and her employer of the conviction exacerbates the seriousness of this case.'

The panel also had regard to Miss Atkinson's handwritten submissions dated 28 April 2022.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct in respect of charges 2, 3 and 4, the panel had regard to the terms of the Code.

The panel was of the view that Miss Atkinson's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times...

20.4 keep to the laws of the country in which you are practising

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Atkinson's dishonest behaviour in knowingly failing to notify her employer or the NMC of her conviction was serious and fell far below the standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and conviction, Miss Atkinson's 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 be honest and open and 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) ...
- 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.'*

The panel determined that limbs b, c and d were engaged in this case. The panel found that Miss Atkinson's conviction and misconduct brought the profession into disrepute. The panel was of the view that Miss Atkinson's conviction is serious as it involved an assault of Person A, an elderly and vulnerable person. The panel considered that a conviction of this nature had brought the profession into disrepute and breached fundamental tenets of the profession; a nurse is expected to be compassionate and treat others with dignity and respect. The panel also found that Miss Atkinson's dishonest conduct brought the profession into disrepute and breached fundamental tenets of the profession. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel went on to consider whether Miss Atkinson is likely to repeat her misconduct. It had regard to the Pre-Sentence Report completed by HM Prison & Probation Service completed on 5 November 2019 in which the following was stated:

'Likelihood of further offending:

Based on Ms Atkinson's lack of previous convictions she is assessed as posing a low risk of further offending. I did not identify any factors which indicate a higher likelihood of reconviction.'

The panel also had regard to Miss Atkinson's written representations. It found that she expressed genuine remorse for her actions but her insight into her conviction and misconduct was limited. The panel noted that Miss Atkinson accepted that she acted dishonestly in failing to notify her employer and the NMC of her conviction and that she said she failed to do so because she was '*embarrassed*' and '*ashamed*'. Whilst the panel noted that HM Prison & Probation Service consider that Miss Atkinson poses a low risk of re-offending, the panel found that there was no evidence before it to demonstrate that she would not act dishonestly in the future.

The panel considered that the conviction for assaulting and causing harm to Person A and the subsequent misconduct through seeking to conceal the conviction and acting dishonestly, are extremely serious, attitudinal in nature and inherently difficult to remediate.

The panel noted that this is brought on public interest grounds alone and that no concerns have been raised about her clinical practice.

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 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 determined that a finding of impairment on public interest grounds is required because a fully informed member of the public would be very concerned that a nurse was convicted of assault and received a suspended custodial sentence. Furthermore, a member of the public would be also concerned that a nurse acted without integrity and dishonestly in seeking to conceal her conviction. The panel therefore concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and finds Miss Atkinson's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mss Atkinson's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Atkinson off the register. The effect of this order is that the NMC register will show that Miss Atkinson has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Representations on sanction

The panel noted that the NMC had sent Miss Atkinson its statement of case notifying her that it would seek the imposition of a striking off order if it found her fitness to practise currently impaired.

The panel also bore in mind Miss Atkinson's written representations dated 28 April 2022.

Decision and reasons on sanction

Having found Miss Atkinson's 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:

- Miss Atkinson, as a healthcare professional, must have been aware of the potential health complications arising from injuring an elderly and vulnerable person.
- Her actions caused harm to Person A.
- Miss Atkinson knowingly concealed her conviction from her employer and regulator.
- Her dishonesty was pre-meditated, occurring over a long period of time and only came to light because of another NMC investigation.
- Miss Atkinson has demonstrated limited insight into her dishonesty.
- She benefited financially from her dishonesty.

The panel also took into account the following mitigating features:

- Miss Atkinson appears to demonstrate genuine remorse for her conduct.
- She made full admissions to the NMC charges.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness and nature of this 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 and nature of the case, and the dishonesty identified, an order that does not restrict Miss Atkinson's 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 Miss Atkinson's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Miss Atkinson's registration would be a sufficient and appropriate response. The panel is 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 determined that the dishonest conduct, and the conduct which led to Miss Atkinson's conviction and suspended custodial sentence, was not something that can be addressed through retraining given the deep-seated personality and attitudinal problems identified in this case. Furthermore, the panel concluded that the placing of conditions on Miss Atkinson's registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that 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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel considered that the serious breach of the fundamental tenets of the profession evidenced by Miss Atkinson's actions is fundamentally incompatible with her remaining on the register. Miss Atkinson's dishonesty had not been restricted to a one off incident but had persisted over many months, only coming to light when she became subject to a separate NMC investigation. The panel considered that Miss Atkinson, while clearly remorseful, demonstrated limited insight into why she had made the decision to conceal her conviction from both her employer and the NMC. She had not provided evidence that she had reflected fully on her misconduct and therefore the panel concluded that there was a real risk of repetition in terms of dishonesty.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction and would not uphold proper professional standards in this case.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife 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?*

Miss Atkinson's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Atkinson's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Atkinson's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was 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.

Decision and reasons on interim order

As the striking-off 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 Miss Atkinson's own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary due to the high public interest in this case. 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 to cover the appeal period.

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

That concludes this determination.

This will be confirmed to Miss Atkinson in writing.