

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

**Substantive Hearing
Thursday, 11 April – Friday 12 April 2024**

**Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ**

and

Virtual Hearing

Name of Registrant:	Katrina Mahoney
NMC PIN	18L0045W
Part(s) of the register:	RNA: Registered Nurse – (sub part 1) Adult – Level 1 (25 February 2019)
Relevant Location:	Merthyr Tydfil
Type of case:	Conviction
Panel members:	Clive Chalk (Chair, lay member) Mark Gibson (Registrant member) Paul Leighton (Lay member)
Legal Assessor:	Charles Aphorp
Hearings Coordinator:	Petra Bernard
Nursing and Midwifery Council:	Represented by Simran Ghotra, Case Presenter
Miss Mahoney:	Present and represented by Thomas Buxton, (Crucible Law), instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 1a, 1b
Facts not proved:	None
Fitness to practise:	Impaired

Sanction: **Striking-off order**

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

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

At the outset of the hearing, Mr Buxton made a request on your behalf that this case be held entirely in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Ghotra on behalf of the Nursing and Midwifery Council's (NMC) submitted that it is the NMC's position that the application is supported, however only to the extent that any reference to [PRIVATE] should be heard partially 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.

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised in order to protect your right to privacy.

Details of charge (as read)

'...That you, a registered nurse:

1) On 5 September 2023 at Merthyr Tydfil Crown Court were convicted of:

- a) causing death by driving without due care and attention / reasonable consideration at a time when you were unfit to drive through drink contrary to section 3A(1)(a) of the Road Traffic Act 1988;*

- b) driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath, namely 73 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit contrary to section 5 of the Road Traffic Act 1988*

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

Background

The charges arose whilst you were employed as a registered nurse by Cardiff & Vale University Health Board (the Health Board). The NMC received an anonymous referral on 2 January 2022 alleging that on 24 December 2022, you were driving recklessly whilst over the legal alcohol limit and hit Person A, an 82 year old male pedestrian with your car. Person A sadly passed away as a result of his injuries.

The NMC also received a referral from the Health Board, who provided additional information. The Health Board explained that you informed them of the incident and you had told them that [PRIVATE] which made the Christmas period difficult and may have contributed to your behaviour.

Your line manager Ms 1 provided a local statement where she recounted details of a meeting she held with you on 28 December 2022. You told her that you were driving your car with your 14-year-old son in the vehicle on the evening of 24 December 2022 and were involved in an Road Traffic Collision (RTC) whereby your car hit a pedestrian, who subsequently passed away. You said you were breathalysed at the scene and stated that you had consumed alcohol that evening but did not state the quantity.

You said that you did initially leave the scene, but explained that this was purely to ensure that your son was in a place of safety. You immediately returned to the scene and identified yourself as the driver responsible.

You said that you woke up on Christmas eve morning with an overwhelming feeling of dread for the days ahead as it was going to be the first Christmas [PRIVATE].

You advised that you were arrested and detained by police overnight on 24 December 2022 on suspicion of causing serious injury by driving without due care and attention. You were released on 25 December with no charges made as the police continued their investigation. You were due to answer bail on 25 March 2023.

You were charged on 17 July 2023 at Merthyr Tydfil Magistrates Court with causing death by careless driving while unfit through drink, and driving with excess alcohol, namely 73mg of alcohol per 100ml of breath.

You appeared at Merthyr Tydfil Crown Court on 5 September 2023 and pleaded guilty to:

- Causing death by driving without due care and attention / reasonable consideration while unfit through drink
- Driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath, namely 73 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit

You were sentenced to five years imprisonment – two and a half years custodial and two and a half years non-custodial under license. You are serving your sentence at His Majesty's Prison Eastwood Park. You were also disqualified from driving for seven and a half years with a requirement to retake your test before restarting driving.

As a result of the conviction, you were dismissed by the Health Board.

The Certificate of Convictions says that your breath reading was 73 microgrammes of alcohol in 100ml of breath, which is over twice the legal limit of 35 microgrammes of alcohol in 100ml of breath.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account your admission to the facts and the Certificate of Conviction. The panel finds that the facts are found proved in accordance with Rule 31(2) and (3).

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your 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.

Submissions on impairment

Ms Ghotra addressed the panel on the need to have regard to protecting the public and also 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 made reference to the NMC Guidance on Impairment: Reference DMA-1 and to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin). In paragraph 76 of that case, 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.'

Ms Ghotra submitted that limbs a, b and c in the test set out in the case of *Grant* can be answered in the affirmative in this case and so requires a finding of impaired fitness to practice. She submitted that you do not dispute that you are impaired.

She submitted that you caused harm to Person A when you hit him with your car. He required urgent care and assistance at the time and you left him lying in the carriageway at risk of further injury and at unwarranted risk of harm. You were a band 6 nurse at the time and did not assist him, rather you made the decision to drive away, albeit you did return to the scene some ten minutes later. For this reason, she stated you ate impaired on public protection grounds.

Ms Ghotra submitted that you drove your car with double the alcohol limit and at twice the speed limit. She submitted that you were the most able person to assist and did not stop to assist the victim when you hit him with your car. She submitted you had your son with you in the car at the time.

Ms Ghotra submitted that for a nurse, a registered healthcare professional, not to offer care to an injured person is indicative of an attitudinal issue. She submitted that your actions did fall seriously short of what is expected of a registered nurse and are fundamentally incompatible with you remaining on the register. She submitted that members of the public would view your actions as deplorable and would bring the profession into disrepute. She submitted that it would erode public confidence in the profession and the NMC as its regulator were you to be permitted to practise unrestricted.

Ms Ghotra referred the panel to specific areas of the Code:

'...15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.1 only act in an emergency within the limits of your knowledge and competence

15.2 arrange, wherever possible, for emergency care to be accessed and provided promptly

15.3 take account of your own safety, the safety of others and the availability of other options for providing care providing care

and

20 Uphold the reputation of your profession at all times...’

Ms Ghotra referred the panel to the NMC Guidance Reference: FTP2C -1 Criminal convictions and cautions. She submitted that it is acknowledged that this incident was a one-off occurrence and that you are remorseful. However, the Guidance lists '*causing death by careless driving when under the influence of drink or drugs*' to be a specified offence, considered to be so serious that it is likely to undermine professional standards and public confidence in the NMC as its regulator.

Ms Ghotra submitted that you are impaired on both public protection and public interest grounds.

Mr Buxton submitted that you accept that you are currently impaired. He submitted that Ms Ghotra's submissions are based on public interest alone. He referred the panel to the testimonials submitted on your behalf, your reflection and also to the more recent reflection and materials from the prison service and facilities you have attended since your time in prison.

Mr Buxton submitted that the panel must first ask if you are capable of practising kindly, safely and professionally. He submitted that there is nothing before the panel that could raise any question that you have always been capable of practising in this way.

He submitted that it is accepted that this is clearly misconduct and breach of the fundamental tenets of the profession. He submitted that the provisions of the Code, 15, 20, 20.4 and 20.8 are of application in this case.

Mr Buxton submitted that, notwithstanding the aggravating feature of you leaving the scene after the incident, impairment is to be found on public interest grounds alone. He submitted that there is no prospect whatsoever of this act being repeated and there is no suggestion anywhere that you caused harm to anyone or persons during the course of your profession, nor pose any risk to the public that needs to be declared to the public.

He submitted that this is not a public protection case in any sense of the word and accordingly, impairment is a declaration that your fitness to practise needs to be restricted by reason of your conviction and what that means to the wider public interest.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the NMC's Fitness to Practise Library, updated on 27 March 2023, which states:

'...The question that will help decide whether a professional's fitness to practise is impaired is: "Can the nurse, midwife or nursing associate practise kindly, safely and professionally?" If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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. 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) ...’.

In considering the facts of the case against the test for impairment set out by Dame Janet Smith, the panel had the advantage of HHJ Crowther’s sentencing remarks which were addressed to you. In particular the panel found the following passages from the Learned Judge to be impactful and relevant to its deliberations:

“...you hit Person A, the windscreen of your vehicle was smashed, the outside of the car was damaged, you must have felt the impact. You must have been aware of what you had done. But rather than stop and help and do anything you could have done, you carried on leaving him lying in the carriageway and at risk of further injury...”

The panel was of the view that on three occasions, in your reflective piece, you say that you used [PRIVATE]. It noted that you are currently receiving support for that matter however this has not yet been completed, therefore you present a risk in the future until it is resolved. The panel noted that you were double the legal limit of alcohol and driving at twice the speed limit and failed to stop after the incident. The panel determined therefore that the public protection ground is engaged. The panel also acknowledged that alcohol was a major part of your convictions and that you are taking positive step to show that you are dealing with your alcohol problems.

The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel took account that the incident was very serious and led to the death of an elderly man. The panel determined that you should have stopped to offer immediate medical assistance and instead you drove away from the incident.

The panel therefore determined that limbs a, b and c as set out in the case of *Grant* to be engaged.

The panel bore in mind that 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also 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 on both public protection and public interest grounds.

Your evidence to the panel

Mr Buxton took the panel through your background in nursing and referred it to the various supporting reference and testimonials provided by five former colleagues and friends.

You were taken to your reflective statement in which you outlined the difficult personal circumstances you endured around the time the fatal incident occurred. [PRIVATE].

You said, at the time of the incident, that your elder son was with you in the car and explained why you acted in the way you did by leaving the scene as your son needed to be removed from the situation so as not to cause him further distress. You said you were conflicted at the time with leaving to attend to your son and the need to remain at the incident. You said that you attended about ten minutes later.

You told the panel that you want to meet the Person A's family and to apologise to them and for them to know that you recognise the hardship that you have put upon them. To that end, you have requested a Restorative Justice meeting with the Person A's family. When asked about how your conduct and consequences affected your employers, you said that you felt ashamed and had let people down and think about this every single day. You said you want people to regain their faith in you and to give you a second chance.

Ms Ghotra asked you in cross-examination whether prior to the incident you sought any support to help [PRIVATE]. [PRIVATE]. You were asked about your alcohol being just over double the legal limit, you said that the reason you left the house that night is that you wanted to get out of the situation. You said you did not consider the amount of alcohol you consumed at the time. When asked what you thought the effect your conduct would have on public confidence and trust in the nursing profession, you stated that you acknowledge it would be very concerning but hope they have faith in you that this would never happen again.

Submissions on sanction

Ms Ghotra submitted that at the time of the incident, you had your son who was a minor in the car with you. She acknowledged [PRIVATE].

She referred the panel to the case of *Fleischmann v GDC* [2005] EWHC 87 (Admin) and to the Guidance on SAN-3d. She submitted in light of the nature and seriousness of this case, it would not be appropriate for no action or a caution order as this would undermine public confidence in the profession and the NMC as its regulator. She submitted that a conditions of practice order, given the nature of this case would not be practical and there are no workable conditions that could be formulated as the incident took place outside of work so would not serve any useful purpose.

In relation to a suspension order, she acknowledged that this was a single incident and that you have provided a reflective piece and expressed remorse, however, she submitted that your actions are significantly incompatible with remaining on the register. A period of suspension would not be sufficient to uphold proper professional standards and conduct or maintain public confidence in the profession.

Ms Ghotra submitted that a striking-off order is the appropriate sanction. She submitted that the key considerations the panel must take into account, include:

- *'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?'*

She submitted that all the above questions can be answered in the affirmative.

She submitted that it is a serious specified offence and your actions led to the death of an elderly man, who was a registered nurse. She submitted that public confidence can only be maintained if you are removed from the register.

Mr Buxton referred the panel to your reflective statement and testimonials.

In terms of public interest, he submitted that you fully understand the causative effect of your actions, recognise the disapprobation of the Court, the NMC and wider public of your action on the night of the incident. In acknowledging the aggravating features of this case including leaving the scene of the incident, in your reflection you stated that you prioritised the safety of your son and it was shock, anguish and fear which led to you to act in the way that you did, which was wrong and unprofessional.

Mr Buxton submitted that it is almost impossible to conceive of the pain and unbearable grief that you must have felt [PRIVATE]. He referred the panel your response bundle which included the chronology of events that occurred leading to when this offence was committed, and the grief and impact this must have had on your behaviour.

In terms of sanction he acknowledged that the profession trumps the impact or rights of the practitioner, however, he submitted that there are significant features which would allow the panel to take an exceptional course in this case.

Mr Buxton submitted the following mitigating features:

- Full acceptance of your responsibility in this case and the fact you returned to the scene and let yourself be known to the authorities
- No previous regulatory concerns or criminal history
- Full engagement with the proceedings and an express wish to address the panel yourself
- [PRIVATE]
- Your remorse through which you recognise the impact of your actions in particular on the family of the deceased, the profession and wider public
- The remedial steps you have taken from the time in prison and the positive feedback you have received for your work and attitude whilst there
- Fully developed insight
- Entirely out of character and a single instance of criminality
- No deep-seated evidence of an attitudinal problem
- No evidence of repetition and the likelihood of this happening again is remote
- The panel can be satisfied that you have insight and do not pose any significant

threat of repeating this behaviour.

Mr Buxton submitted that a suspension order is the appropriate sanction in this case as it can be reviewed upon your release from custody.

For the reasons outlined above, Mr Buxton submitted that the reputation of the profession would be upheld by the imposition of a suspension order with carefully crafted reasons and explanation for the decision.

Decision and reasons on sanction

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

In reaching this decision, the panel has had regard to all of 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.

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 significantly over the speed limit and double the legal alcohol limit
- You did not stop immediately after the incident, albeit you did return after ten minutes
- You had your son, who was a minor in the car at the time of the incident

- You caused the death of a vulnerable person

The panel also took into account the following mitigating features:

- [PRIVATE]
- You have made significant efforts to develop insight but not fully developed
- You have expressed remorse
- You self-referred for specific help [PRIVATE]
- Your good engagement with the prison services
- Your positive testimonials from colleagues

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, and the public protection issues identified, 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 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 your 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. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

With regard to insight the panel determined that you have developed significant insight into the impact of your actions. However, you have not fully developed your insight into [PRIVATE]. The panel acknowledges the efforts you have made to seek help and to engage with the services available to you.

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 panel considered the conviction and aggravating factors, as highlighted by the facts found proved, were a very significant departure from the standards expected of a registered nurse. The panel determined that your behaviour is a breach of the fundamental tenets of the profession and is incompatible with you remaining on the register.

Therefore, in this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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?’*

The panel was of the view that your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel determined that the findings in this particular case demonstrate that your actions were serious and to allow you 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 your 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 sanction 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.

Submissions on interim order

The panel took account of the submissions made by Ms Ghotra. She invited the panel to impose an interim suspension order to cover this period on the grounds that it is necessary to protect the public and is otherwise in the public interest. The period of such an interim order should be for 18 months, in case any appeal against the substantive order is made.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise 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 to cover the appeal period.

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

That concludes this determination.

This will be confirmed to you in writing.