

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

**Substantive Meeting
Monday 6 October 2025**

Virtual Meeting

Name of Registrant:	Emma Annette Burton
NMC PIN:	09B0248W
Part(s) of the register:	Nurses part of the register Sub part 1 RNA, Registered Nurse – Adult (03 April 2009)
Relevant Location:	Merthyr Tydfil
Type of case:	Conviction
Panel members:	Louise Guss (Chair, Lay member) Patience McNay (Registrant member) Sabrina Sheikh (Lay member)
Legal Assessor:	Gareth Jones
Hearings Coordinator:	Catherine Acevedo
Consensual Panel Determination:	Accepted
Facts proved:	Charge 1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Caution order (3 years)
Interim order:	No order

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Burton's registered email address by secure email on 4 September 2025.

Further, the panel noted that the Notice of Meeting was also sent to Mrs Burton's representative at the Royal College of Nursing (RCN) on 4 September 2025.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and that this meeting was to be heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Burton has been served with notice of this meeting 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).

Details of charge

That you, a registered nurse:

- 1) On 1 July 2024 were convicted at Merthyr Tydfil Magistrates' Court of driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath, namely 130 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit on 14 June 2024.

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Mrs Burton.

The agreement, which was put before the panel, sets out Mrs Burton's full admissions to the facts alleged in the charge, and that her fitness to practise is currently impaired by reason of her conviction. It is further stated in the agreement that an appropriate sanction in this case is that of a caution order for a period of 3 years.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

'The Nursing & Midwifery Council ("the NMC") and Emma Annette Burton ("Mrs Burton"), PIN 09B0248W ("the Parties") agree as follows:

1. Mrs Burton is content for her case to be dealt with by way of a CPD meeting. Mrs Burton understands that if the panel determines that a more severe sanction should be imposed, the panel will adjourn the matter for this provisional agreement to be considered at a CPD hearing.

2. Mrs Burton understands that if the panel proposes to impose a greater sanction or make amendments to the provisional agreement that are not agreed by Mrs Burton, the panel will refer the matter to a substantive hearing.

The charge

3. Mrs Burton admits the following charge:

1) On 1 July 2024 were convicted at Merthyr Tydfil Magistrates' Court of driving a motor vehicle after consuming so much alcohol that the proportion of it in your breath, namely 130 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit on 14 June 2024.

The facts

4. Mrs Burton was entered onto the NMC's register of nurses, midwives and nursing associates, specialising in Adult Nursing on 3 April 2009. Mrs Burton is employed by Cwm Taf NHS Trust as a Senior Staff Nurse, [PRIVATE]. On 1 June 2025, Mrs Burton was successfully appointed to a 3 month secondment as a Deputy Ward Manager.

5. On 18 June 2024, the NMC received a self-referral from Mrs Burton which declared that she had been charged with a criminal offence. This was in relation to a minor road traffic collision with another vehicle on 14 June 2024. Fortunately, no injuries were sustained. Mrs Burton was breathalysed at the roadside and was subsequently arrested and charged with driving a motor vehicle on a road after consuming so much alcohol that the proportion of it in breath, namely 130 microgrammes of alcohol in 100 millilitres of breath, exceeded by prescribed limit contrary to section 5(1) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988. Mrs Burton was almost 4 times over the limit of 35 microgrammes. In reply to being charged by the police, Mrs Burton said, "I'm so sorry, I was stupid".

6. On 1 July 2024, Mrs Burton appeared at Merthyr Tydfil Magistrates' Court, where she entered a guilty plea. On the same date, she received the following sentence: an 8 week sentence of imprisonment suspended for 12 months, with a requirement to complete (1) 20 hours on [PRIVATE] and (2)

120 hours unpaid work. She was also ordered to pay a fine of £239 and was disqualified from driving for 25 months.

7. Mrs Burton has admitted the charge and cited a contextual factor, namely, that [PRIVATE]. Mrs Burton was not driving to or from work at the time of the incident.

Conviction

8. The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 at Rule 31(2) state that where a registrant has been convicted of a criminal offence –

- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*

9. The NMC guidance at DMA-6:

Findings of other organisations or bodies

If a professional has been convicted of a crime or another health or social care organisation has made adverse findings against them, the NMC can always rely on these decisions when seeking to prove the underlying facts they are based on.

10. The certificate of conviction from Merthyr Tydfil Magistrate's Court confirms that on 1 July 2024 Mrs Burton pleaded guilty and was convicted of the offence which forms the NMC charge.

Impairment

11. The parties agree that Mrs Burton's fitness to practise is currently impaired by reason of her conviction.

12. The NMC's guidance¹ explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. This involves a consideration of both the nature of the concern and the public interest.

13. The parties agree that consideration of the nature of the concern involves looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J:-

- (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 professions 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 professions; and/or*
- (d) Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*

14. The parties have also considered the comments Cox J in Grant at paragraph 101:

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards

and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in circumstance of this case.”

15. The parties agree that limbs (b) and (c) of the Grant test are engaged in this case.

Limb (b):

16. The parties agree that Mrs Burton’s conviction for a drink driving offence has brought the nursing profession into disrepute. NMC guidance FTP-2c relating to criminal convictions and cautions states that if a registrant has been given a custodial sentence (this includes suspended sentences) the offending is considered to be so serious that it is likely to undermine professional standards and public confidence in the nursing profession.

17. The parties agree that the conviction has brought the profession into disrepute.

Limb (c):

18. Registered Nurses are expected to uphold the standards set out in the Code. Mrs Burton has breached a fundamental tenet of the profession by failing to promote professionalism and trust. The parties agree that Mrs Burton’s conviction has breached the following provisions of the Code:

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

19. The public has the right to expect high standards of registered professionals, and to expect that Registered Nurses will uphold the tenets of their profession and abide by the Code.

20. Impairment is a forward-thinking exercise that looks at the risk the registrant's practice poses in the future. NMC Guidance adopts the approach of Silber J in the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment, which are:

- 1) Whether the conduct that led to the charge(s) is easily remediable.*
- 2) Whether it has been remedied.*
- 3) Whether it is highly unlikely to be repeated.*

21. Mrs Burton was given a sentence of 8 weeks imprisonment, suspended for a period of 12 months

22. The guidance FTP-2c distinguishes between offending in professional practice and outside of professional practice. The parties agree that Mrs Burton's conviction relates to offending outside of her professional practice.

23. The parties consider that that Mrs Burton's conviction, namely driving under the influence of alcohol, could be a type of conduct that may be more difficult to address as it does not relate to professional practice and is a type of behaviour that may be indicative of an attitudinal issue. However, the parties agree that Mrs Burton's conviction, should be viewed in context, along with the court's sentence, the remorse expressed, and the insight demonstrated. It is agreed therefore that matters are remediable.

Remorse, reflection, insight, training and strengthening practice

24. Mrs Burton advised in a context form on 15 July 2024, that at the time of the offence she “was going through a very tough time” [PRIVATE]. She stated “[PRIVATE] and made a stupid decision to do what I did that day, I am utterly mortified disgusted and ashamed of what I did...”

25. However, Mrs Burton did not use this to excuse or minimise her behaviour which led to her conviction. She self-referred to the NMC and pleaded guilty in court at the earliest opportunity.

26. She has demonstrated remorse by apologising for her behaviour, from the outset, to the police. The charge sheet provided by the police states that Mrs Burton’s response when she was charged with the offence was “I’m sorry – I was stupid”.

27. Mrs Burton also detailed in the context form the steps she has taken to avoid a repetition of similar behaviour which led to her conviction. She stated, “I have not touched alcohol since the incident nor do I want to, I am waiting to attend [PRIVATE].”

28. In the same form, Mrs Burton also shows insight by explaining that she realised that she should have sought help sooner [PRIVATE] and goes on to say, “I should never have got in the car and drove and never ever will again.”

29. The parties agree that Mrs Burton has consistently accepted that her actions were wrong, and she has reflected and developed insight into her behaviour so as to give an assurance that there will be no repetition of similar conduct.

Public protection impairment

30. A finding of impairment is not necessary on public protection grounds. There is no evidence of any harmful, deep-seated behavioural or attitudinal issues, and the conduct which led to her conviction stands in isolation. Mrs Burton has been dealt with by the Criminal Justice System as regards her underlying behaviour which was not related to her clinical practice.

Public interest impairment

31. The parties agree that a finding of impairment is necessary on public interest grounds.

32. In *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that a panel need to consider:

“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.”

33. The parties agree that a finding of impairment on public interest grounds is required to declare and uphold proper standards and to maintain confidence in the profession. The NMC is tasked with maintaining (1) public confidence in the profession and (2) proper professional standards of conduct in Article 3 of the NMC Order 2001.

34. The parties agree that Mrs Burton’s fitness to practice is impaired on public interest grounds as she has breached the provisions of the NMC Code and the fundamental tenets of nursing by breaking the law as evidenced by her conviction.

Sanction

35. With reference to the NMC's sanction guidance, the parties agree that the appropriate and proportionate sanction in this case is a Caution Order for a period of three years. The available sanctions have been considered in ascending order of seriousness in line with NMC guidance.

36. No aggravating factors have been identified in this case.

37. In terms of mitigating factors, Mrs Burton has expressed genuine remorse in relation to the conduct which led to her conviction and demonstrated reflection and insight.

38. Whilst the NMC sanction guidance SAN-3a states that a panel has the discretion to take no further action, it "will use this discretion only in rare cases, and it will need to explain its decision very clearly". It is agreed that this case is not one where it would be appropriate to use this discretion. As per guidance FtP-2c, Mrs Burton's conviction is serious as she has been given a suspended sentence of imprisonment.

39. It is agreed by the parties that in the circumstances of this case, as described above, a caution order would be the appropriate sanction.

Guidance SAN-3b states:

"A caution order is only appropriate if the Fitness to Practise Committee has decided there's no risk to the public or to patients requiring the nurse, midwife or nursing associate's practice to be restricted, meaning the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise

committee wants to mark that the behaviour was unacceptable and must not happen again.”

40. SAN-2 states that the panel should consider, in relation to sanction, if the registrant is still serving their sentence and whether the registrant should be able to restart their professional practice once they have completed their sentence.

41. While the majority of Mrs Burton’s requirements that she was sentenced to by the Court will have been completed, she is currently subject to a driving disqualification. The general rule, as stated in SAN-2 having been established in the case Council for the Regulation of Health Care Professions v General Dental Council and Fleischmann [2005] EWHC 87 (Admin) is that a registered professional should not be permitted to start practising again until they have completed the sentence imposed by the criminal court. However, while the Fleischmann principle can act as guidance it would be incorrect for the FtPC to consider they have no choice but to strike-off, as confirmed in the case of Chandrasekera v Nursing and Midwifery Council [2009] EWHC 144 (Admin). Similarly, Sweeting J, stated in PSA v GDC & Naveed Patel [2024] EWHC 243 (Admin) at para 19 “Fleischmann cannot be applied as if it were a rule” and both it and the regulators guidance based on it must “bend to the overarching requirement to impose a sanction which is just, proportionate and only that which is necessary to maintain public confidence.”

42. In this case, the parties agree the Fleischmann principle should not apply in this case. Due to the nature of the offence, the circumstances of the case and that the suspended sentence order is completed, it would not be proportionate to impose a sanction that suspends or restricts Mrs Burton’s practice.

43. Due to the seriousness of conviction and underlying behaviour as marked by the sentence, it is necessary not only to make a finding of impairment, but to mark the fact that the behaviour was unacceptable and must not happen again. The parties agree therefore that a caution order is both appropriate and proportionate. The parties agree that a caution order for a period of 3 years is appropriate and proportionate with reference to context, remorse, reflection and insight.

Interim Order

44. It is agreed by the parties that it is not necessary or applicable for the panel in this case to consider an interim order to cover the appeal period before the sanction takes effect, due to the sanction being a caution order.

The Parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The Parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.'

Here ends the provisional CPD agreement between the NMC and Mrs Burton. The provisional CPD agreement was signed by Mrs Burton on 28 August 2025 and by the NMC on 1 September 2025.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. He referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mrs Burton. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the profession and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Mrs Burton admitted the facts of the charge. Accordingly, the panel was satisfied that the charge is found proved by way of Mrs Burton's admissions as set out in the signed provisional CPD agreement. The panel endorsed paragraphs 8 to 10 of the provisional CPD agreement in respect of Mrs Burton's conviction.

Decision and reasons on impairment

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

The panel was of the view that Mrs Burton'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 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

Whilst acknowledging the agreement between the NMC and Mrs Burton, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel then considered whether Mrs Burton's fitness to practise is currently impaired by reason of her conviction. In coming to its decision, the panel had regard to the NMC Guidance on Impairment, updated on 3 March 2025, 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.'

The panel determined that Mrs Burton's fitness to practise is currently impaired by reason of her conviction on public interest grounds. In this respect the panel endorsed paragraphs 11 to 34 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Mrs Burton'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 mitigating features:

- Mrs Burton has expressed genuine remorse in relation to the conduct which led to her conviction and demonstrated reflection and insight

The panel considered that there were no aggravating features in this case.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 noted that Mrs Burton has shown insight into her conduct. The panel noted that she made admissions and apologised to this panel for her actions, showing evidence of genuine remorse. Mrs Burton has engaged with the NMC since referral. The panel was provided with no evidence of adverse findings in relation to Mrs Burton's clinical practice either before or since this incident.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel concluded that because the concern was not of a clinical nature, no useful purpose would be served by a conditions of practice order. The panel determined that it is not necessary to protect the public and would not assist Mrs Burton's return to nursing practice.

The panel agreed with the CPD that a caution order would adequately protect the public. For the next 3 years, Mrs Burton's employer - or any prospective employer - will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to this sanction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of 3 years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on Mrs Burton's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that her fitness to practise had been found impaired. If the NMC receives a further allegation that Mrs Burton's fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to Mrs Burton in writing.

Decision and reasons on interim order

The panel was satisfied that it is not necessary or applicable in this case to consider an interim order to cover the appeal period before the sanction takes effect, due to the sanction being a caution order.

That concludes this determination.