

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

**Substantive Hearing
Monday 11 July – Tuesday 12 July 2022**

Virtual Hearing

Name of registrant:	Dayna May Saddington
NMC PIN:	10H1012E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (21 September 2010)
Relevant Location:	Leeds
Type of case:	Conviction
Panel members:	Judith Webb (Chair, lay member) Laura Scott (Registrant member) Claire Corrigan (Lay member)
Legal Assessor:	Trevor Jones
Hearings Coordinator:	Jennifer Morrison
Nursing and Midwifery Council:	Represented by Susan Jean, Case Presenter
Miss Saddington:	Present and unrepresented
Facts proved:	All
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 partially in private

At the outset of the hearing, Ms Jean, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be heard partially in private on the basis that proper exploration of your case involves reference to your health and to your private life. The application was made pursuant to Rule 19(3) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

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 your health and your private life as and when such matters are raised in order to protect your privacy. It determined that your right to privacy with respect to your health and private life outweighed the public interest in the hearing being conducted wholly in public.

Details of charge

'That you, a registered nurse

- 1) *On 2 September 2020 were convicted at Leeds Magistrates Court of the following offences:*
 - a) *Driving a motor vehicle on 24 March 2020 when the proportion of a controlled drug, namely Cocaine, in your blood exceeded the specified limit.*
 - b) *Driving a motor vehicle on 24 March 2020 when the proportion of a controlled drug, namely Benzoylecgonine, in your blood exceeded the specified limit.*

2) *On 14 September 2021 were convicted at Leeds Crown Court of the following offences:*

a) *Between 7 April 2018 and 30 September 2018 possession with intent to supply a controlled Class A drug namely Crack Cocaine.*

b) *Between 7 April 2018 and 30 September 2018 possession with intent to supply a controlled Class A drug namely MDMA.*

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

Background

On 2 September 2020, you pleaded guilty at Leeds Magistrates Court to two counts of driving a motor vehicle whilst under the influence of cocaine and benzoylecgonine on 24 March 2020. You were fined and disqualified from driving for 36 months.

On 21 September 2020, you emailed the NMC, stating that you had received a three-year ban from driving '*due to being over the prescribed limit of two controlled substances*'.
[PRIVATE].

On 14 September 2021, you pleaded guilty to possession with intent to supply crack cocaine and MDMA, which are both Class A drugs. On 30 November 2021, you were sentenced at Leeds Crown Court to a 15-month custodial sentence suspended for two years, up to 30 days rehabilitation activity requirement, and a 150-hour unpaid work requirement to be completed by 30 November 2022.

At the time of the referral, you were employed by Leeds Community Healthcare NHS Trust ('the Trust'), where you had worked in various nursing roles since November 2014. Until December 2021, you were employed as a full-time Band 5 Community Staff Nurse in the Chapeltown Neighbourhood Team.

Decision and reasons on facts

You made full admissions to the charges.

The panel accepted the advice of the legal assessor. It found the facts proved on the basis of your admissions.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your convictions. 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 Jean addressed the panel on the issue of impairment and reminded the panel 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Jean submitted that the second and third limbs of *Grant* were engaged. She submitted that there was no evidence that you had placed patients at an unwarranted risk of harm, reminding the panel that the events resulting in your convictions took place outside of work, were not connected to work, and were related to your private life. As a result, Ms Jean informed the panel that the NMC would not be advancing an argument of impairment on public protection grounds. [PRIVATE].

Ms Jean submitted that the four offences of which you were convicted were very serious, particularly the offence of possession with the intent to supply, referring the panel to the sentencing remarks of the judge at Leeds Crown Court. She submitted that your offences represented the “*antithesis*” of what the public would expect from someone working in a caring profession, and eroded the trust and confidence the public places in nurses. Ms Jean submitted that members of the public would be less likely to seek care if they knew that their nurse had been convicted of drug possession and distribution. She submitted that these convictions were of particular concern because of the access nurses have to medication, especially controlled drugs.

Ms Jean submitted that your conduct had breached the expectation that nurses will be law-abiding citizens, and in particular, had breached paragraphs 20.1, 20.2, 20.4 and 20.8 of the *Code: professional standards of practice and behaviour for nurses, midwives and nursing associates* (‘the Code’). She accepted that through your statement, you have shown some insight into your convictions and the impact they have had on the reputation of the nursing profession. However, she submitted that a finding of impairment on public interest grounds must be made in order to maintain public confidence in the profession and to declare and uphold standards of conduct for nurses.

You gave evidence under affirmation. You told the panel that there had never been any issues with your practice, and [PRIVATE]. [PRIVATE], and agreed that at the time, you were not upholding the reputation of the NMC or of the nursing profession. You told the panel that you had never put any patients at risk, and [PRIVATE].

You told the panel that you have completely turned your life around. [PRIVATE]. You no longer associate with the same people, and have moved away from the area. You told the panel that the possibility of being sentenced to four and a half years at the Crown Court was a wake-up call, and that you have reconnected with your family. [PRIVATE].

You said that you would like to retrain as a mental health nurse and a peer counsellor to support people experiencing domestic violence and homelessness. [PRIVATE]. You said

that whatever the outcome of this hearing, today will be some closure for you. You said that if you could no longer be a nurse, you still want to help people in other ways.

You told the panel that you had completed the 30 days' rehabilitation activity requirement as imposed by the Crown Court, but have not yet completed the 150-hour unpaid work requirement, as there were initial problems with availability of placements, and [PRIVATE]. You said that your probation meetings had been reduced from fortnightly to monthly, and you have kept all appointments.

[PRIVATE].

You told the panel that you were a *"realist"* and knew that *"no one wants a drug dealer looking after a family member"*. However, you believed that your experiences could be beneficial to patient outcomes, and that whilst you accepted that adult nursing was now closed to you, you hoped that there might be a place for you in mental health nursing. You said that your previous employer had been affected by your offences, as it lost a worker, as well as the NMC. You said that you were aware that if you returned to a nursing role and others became aware of your offences, it could be a staffing issue.

You said that you had wanted to become a nurse since you were very young. After qualifying, you told the panel that you worked in nursing homes until you could find a hospital position. You were hired by the Trust, and worked in a rehabilitation unit for the elderly. [PRIVATE]. You began working as a community nurse, and you last worked as a nurse in 2021. You told the panel that you had been taking online courses in psychology, suicide prevention and emotional intelligence, but you have not been able to keep your nursing practice current.

You said that you would be concerned about a nurse who had been convicted of your offences working with medication, and would want management and the NMC to be aware. However, you would also view them as a normal person who was carrying on with their life following a serious conviction. You acknowledged that patients and families would

be affected if they learned of your convictions, in that they “*wouldn’t want a drug dealer caring for them*”.

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 the convictions, 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 *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) ...'*

Looking to the past and present, the panel found that limbs b) and c) were engaged. By way of your convictions, you have breached the fundamental tenets of the nursing profession, and therefore brought its reputation into disrepute.

The panel acknowledged your continued engagement and the insight you have shown into the circumstances leading to your offending, as well as [PRIVATE]. You have considered the professional implications of your convictions on the people you cared for and may care for in the future, and have recognised the potential concerns about your access to medication.

However, the panel has borne in mind the overarching objectives of the NMC, which include 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, your offences are of a nature so serious that a finding of impairment on public interest grounds is required. The panel considered that, as you have yet to complete your sentence, public confidence in the profession would be compromised if the panel did not make a finding of impairment.

Having regard to all of the above, the panel was satisfied that your 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 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 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.

Submissions on sanction

Ms Jean informed the panel that in the Notice of Hearing, dated 30 May 2022, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Ms Jean outlined the aggravating and mitigating factors in this case. She submitted that your repeat offending demonstrated a pattern of conduct over a protracted period of time. She acknowledged that your former employer had raised no concerns about your clinical practice or about you potentially being under the influence of drugs at work. Ms Jean also acknowledged that your offences took place during a time when you were experiencing significant health and personal issues. Nonetheless, with reference to *Bolton v Law Society* [1999] 1 WLR 512, she submitted that personal mitigation was of less weight in

regulatory proceedings than in criminal proceedings, because the NMC's primary objectives are to protect the public and uphold public trust and confidence in the profession, rather than to punish.

Ms Jean submitted that taking no further action or imposing a caution order would not meet the public interest because of the seriousness of your offences. A conditions of practice order would not be workable, because your convictions were not related to any clinical failings, and your offences took place outside of work. Ms Jean submitted that a suspension order would not be appropriate because of your repeat offences, which were serious enough to pass the custody threshold. She noted that you were serving a suspended sentence that would not expire until November 2023, and submitted that there was no reason to depart from *Council for the Regulation of Health Care Professionals v (1) General Dental Council and (2) Fleischmann* [2005] EWHC 87 (QB).

Ms Jean submitted that the most appropriate sanction would be a striking-off order. She submitted that your convictions for four serious drugs offences between 2018 and 2020 must raise concerns about your professionalism. [PRIVATE], Ms Jean submitted that public confidence in the NMC and in the profession could not be maintained if you remained on the register. She informed the panel that you have been subject to an interim suspension order since December 2021.

With reference to your personal statement, you wished to remind the panel that [PRIVATE]. You said that these events were in your past and you were a different person now. You said that you would like to practise again, but if you could not, you would find another way to help people.

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 NMC's published guidance on sanctions ('the SG'). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel accepted the following aggravating and mitigating factors, as proposed by Ms Jean:

- Your convictions related to two serious offences involving Class A drugs. They indicated a pattern of repeat offending over a two-year period.
- Your previous employer has not raised any concerns about your clinical practice or about you potentially being under the influence of drugs at work.

The panel wished to acknowledge the significant efforts you have made in changing your life and [PRIVATE]. It has taken account of your self referral and full engagement with the hearing process and your frank and open participation with the panel in the course of the proceedings.

However, in determining sanction, personal mitigation had to be balanced against the primary objectives of the NMC, which are to protect the public and to maintain public trust and confidence in the profession.

The panel first considered whether to take no action, but concluded that this would be inappropriate in view of the seriousness of your offences. 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 your offences, 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 this case not to be at the lower end of the spectrum, and determined that a caution order would be neither proportionate nor in the public interest.

The panel next considered whether placing conditions of practice on your registration would be an appropriate and proportionate response. As your convictions did not relate to clinical failings or relate to offences that took place at work, the panel concluded that no practical or workable conditions could be formulated. The panel further concluded that the placing of conditions on your 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 the following relevant factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient; and*
- *No evidence of repetition of behaviour since the incident.*

The panel determined that neither of these factors were engaged in this case.

Your offences, as highlighted by the facts found proved, were a significant departure from the standards expected of a registered nurse. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be an appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel considered 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?*

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 your offences were of a nature so serious that to allow you to continue practising would seriously undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors, and taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having had 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 herself, the panel has concluded that nothing short of a striking-off order 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.

This will be confirmed to you in writing.

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 is in your own interests until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

Submissions on interim order

Ms Jean submitted that an interim suspension order of 18 months was otherwise in the public interest in order to cover any appeal period. With reference to *Fleischmann*, she submitted that in the circumstances, it would not be appropriate for you to practise at this stage.

Decision and reasons on interim order

The panel was satisfied that an interim order is otherwise in the public interest. In reaching this decision, it had regard to the reasons set out in its decision to impose the substantive order.

The panel concluded that an interim conditions of practice order would be incompatible with its earlier decision to remove you from the register. It therefore determined that an interim suspension order of 18 months was the appropriate order.

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.