

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

**Substantive Hearing
Monday 19 June – Tuesday 20 June 2023**

Virtual Hearing

Name of registrant:	Jane Avril Archer
NMC PIN:	00C0299E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing (15 September 2003)
Relevant Location:	Derby
Type of case:	Conviction
Panel members:	Deborah Jones (Chair, lay member) Lisa Punter (Registrant member) Alison Lyon (Lay member)
Legal Assessor:	Fiona Moore
Hearings Coordinator:	Jennifer Morrison
Nursing and Midwifery Council:	Represented by Nina Dunn, Case Presenter
Ms Archer:	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 partly in private

Whilst you were giving evidence, you made an application that this case be heard partially in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

Ms Dunn, on behalf of the Nursing and Midwifery Council (NMC), supported the application.

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

Details of charge

That you, a registered nurse;

- 1) On 26 September 2022 at the Derby Crown Court were convicted of the following offence;
 - a) Assisting an Escaped Prisoner on 15 May 2019, contrary to Section 22 of the Criminal Justice Act 1961.

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

Background

On 10 October 2022, you self-referred to the NMC. In the referral, you disclosed that you had received a criminal conviction for assisting an escaped prisoner ('Prisoner A'). The offence to which the conviction related occurred in May 2019. At the time of the referral, you were working as a registered nurse at Alexandra Care Home.

The NMC subsequently obtained a Certificate of Conviction, which confirms that on 5 April 2022, following a guilty plea, you were convicted of the offence of assisting an escaped prisoner. On 26 September 2022, you were sentenced to 18 months imprisonment suspended for 18 months. You were required to complete 200 hours of unpaid work, to undertake rehabilitation activity for 20 days, and pay a victim surcharge of £140.00.

You met Prisoner A many years ago whilst he was a patient at Rampton Hospital, a secure psychiatric hospital, where you were working as a registered nurse. Prisoner A had been convicted of murder and was serving a life sentence. [PRIVATE]

In May 2019, Prisoner A walked out of HMP Sudbury, which is understood to be an open prison. You were there to pick Prisoner A up and took him back to your home. You subsequently drove him to Dover before leaving him there and returning home. He remained at large for a number of days before you became involved with him again. You were later arrested by the police, having picked up Prisoner A from Dover. You initially denied any involvement, but later accepted that you were involved in Prisoner A's escape, including visiting shops and buying a mobile phone for him.

Decision and reasons on facts

The charge concerns your conviction and, having been provided with a copy of the Certificate of Conviction dated 2 March 2023, the panel finds that the facts are found proved in accordance with Rules 31(2) and (3). In addition, you admitted the charge.

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 conviction. 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. There is no burden or standard of proof in this respect. It is a matter for the panel's own professional judgement.

Submissions on impairment

Ms Dunn referred the panel to the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). 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' of impairment 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) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Ms Dunn submitted that limbs (b) and (c) are engaged. She submitted that your conviction relates to a serious offence for which you received an immediate (albeit suspended) custodial sentence, which has brought the nursing profession into disrepute. Ms Dunn submitted that your offence falls into the category of criminal offences intended to cover conduct which hinders or frustrates the administration of justice. She referred the panel to the NMC's published Fitness to Practise guidance, which states that such an offence is sufficiently serious to be directly referred to the Fitness to Practise Committee.

Ms Dunn submitted that your knowledge of the prison system and the mental health system through your previous role at Rampton Hospital was an aggravating factor in this case. Furthermore, Ms Dunn submitted that you knew that the person you assisted in escaping was in prison for the most serious offence of murder [PRIVATE]. She submitted that your conduct raises fundamental questions about your professionalism and integrity, which could undermine public confidence in the profession.

Ms Dunn submitted that your behaviour clearly breached the fundamental tenet of promoting professionalism, which is expected of all nurses and is outlined in section 20 of the NMC Code [*The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (2015)*]. She submitted that a finding of impairment is

required to mark the profound unacceptability of your behaviour and to uphold proper professional standards.

Ms Dunn submitted that it was apparent from the judge's sentencing remarks in your criminal case that your explanation that your conduct was unplanned was rejected on the basis of the evidence. She further submitted that the judge also expressed doubt that at the time of your arrest, you were arranging to drop off Prisoner A where he could surrender to the police. Ms Dunn submitted that despite the rejection of your explanations, you continued to make similar assertions in your referral and provided details that are inconsistent with and seek to undermine the judge's findings of fact and accordingly, the panel may find that limb (d) is engaged. The panel was referred to *Kirk v Royal College of Veterinary Surgeons* [2004] UKPC 4 and *Achina v General Pharmaceutical Council* [2021] EWHC 415 (Admin).

With respect to current impairment, Ms Dunn referred the panel to *Cohen v General Medical Council* [2008] EWHC 581 (Admin). She submitted that whilst the conviction related to an offence which took place in your private life, the nature of the offence made it less likely to be remediable. Ms Dunn submitted that your knowledge of the prison and mental health systems suggested a more deep-seated attitudinal concern.

Ms Dunn submitted that even if your conduct were remediable, you have not provided any evidence that you have done so. She submitted that through your responses to the NMC, you have minimised your involvement in the offence and sought to undermine the factual basis of your conviction. Ms Dunn submitted that you have not accepted your role in the events that occurred or acknowledged that your behaviour could harm public confidence in nurses. Therefore, there is a real risk of repetition. Furthermore, Ms Dunn referred the panel to *CRHCP v General Dental Council and Fleischmann* [2005] EWHC 87 (Admin), which holds that as a general principle, where a practitioner has been convicted of a serious criminal offence, they should not be permitted to resume practice until they have satisfactorily completed their sentence in order that public confidence in the profession is

maintained. Accordingly, Ms Dunn submitted that a finding of current impairment is required in the public interest.

You told the panel that the offence happened over four years ago, and from May 2019 to October 2022, when you were suspended by the NMC, you were working up to 60 hours a week as a nurse without issue. You explained your role at Rampton Hospital, in that you were never a prison officer, but worked as a mental health nurse, dealing with a variety of mental health patients, some of whom were also in the prison system. You told the panel that Prisoner A was never your patient.

You denied helping Prisoner A to escape and said that you would go and sit outside the prison when he was distressed, as you felt he was reassured by your presence. At the time of his escape, you did not expect him to get in your car. You said that you did not know where Prisoner A was after you left him in Dover until he called you stating that he needed to return to prison. You said the plan was for Prisoner A to hand himself in at HMP Strangeways. You told the panel that you had made a judgement call between taking Prisoner A back to prison or allowing him to remain on the street where he might harm others. You said that you had never been in trouble with the police before this incident. You wished that it had never happened and would not do it again.

You said that the past four years had been very difficult for you. You were dismissed from employment when you were charged, and upon your conviction and NMC interim suspension, you lost your subsequent job at Alexandra Care Home. [PRIVATE] You told the panel that you wanted to return to nursing and that your conviction was unrelated to your nursing practice. You said that Alexandra Care Home was willing to reemploy you, and you have been headhunted for other nursing roles.

Under cross-examination, you explained that you did not self-refer at the time of your arrest in May 2019 because you had assumed that your employer at the time had made the referral. You clarified the roles you had held at Rampton Hospital and how you had met Prisoner A, stating that you had never worked on his ward or with him [PRIVATE].

You said that you do not believe your fitness to practise is currently impaired [PRIVATE]. You told the panel that you had undertaken considerable reflection and have taken part in rehabilitation activities required by the court. You said that you have had discussions with your project worker and probation officer. You regretted being involved in the situation but said your patients had always been your top priority. You acknowledged that the public might consider you untrustworthy as a result of your conviction, but said that anyone who knew you would understand the conflict you were in.

You accepted that there were inconsistencies between what you wrote in your self-referral and the evidence you gave today about your involvement in Prisoner A's escape. In the self-referral, you stated that Prisoner A had shown up at your home after absconding from prison. However, you told the panel today that on the day of the escape, you had met Prisoner A at HMP Sudbury and he had unexpectedly got into your car. You said that the version of events you gave today was the correct account.

When asked to explain why you had given two versions, you told the panel that at the time you self-referred in 2022, you were in shock and not thinking clearly. You told the panel that you did not remember writing what was in your self-referral. However, you then said that what you wrote in your referral was consistent with Prisoner A's testimony, and you wanted your accounts to align. [PRIVATE] When asked why you did not contact the police, you said that you were never more than an arm's length away from Prisoner A, and it was impossible for you to do so. When asked why you returned to Dover at Prisoner A's request, you said that you knew Prisoner A had a temper and had previously murdered someone as a result of that temper. He had also been in prison for 30 years and was unused to dealing with life on the outside. You felt you had a duty of care to take him back to prison rather than leave him on the streets where he could cause more danger and harm to other people. You would rather have put yourself at risk by returning him to prison yourself than allow Prisoner A to potentially harm a member of the public.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

The panel finds that limbs (b) and (c) of the *Grant* 'test' are engaged. Your offending was particularly grave, involving conduct that seriously interfered with the administration of justice and resulted in a custodial sentence. You assisted in the escape of a prisoner who you knew to be dangerous and who could have harmed a member of the public. Your actions have the potential to seriously undermine public confidence in nurses and, as a result, have brought the reputation of the profession into disrepute.

The panel finds that your conduct breached fundamental tenets of the nursing profession, in particular the Code's requirement of nurses to promote professionalism and trust:

'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

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

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

The panel also considered that your admission that the account of events you gave in your self-referral was inaccurate could amount to dishonesty.

With respect to the factors outlined in *Cohen*, the panel considered that the nature of your offending is not easily remediated. However, it went on to consider whether you have in fact remediated your conduct. You have expressed regret for your actions, but this regret appears to originate from the effect of the criminal and regulatory proceedings on your own [PRIVATE] employment.

With respect to insight, the panel heard little reflection from you on how your offending has impacted your patients, colleagues and the reputation of the nursing profession. It considered that the danger Prisoner A posed to the public if he escaped from custody would have been clear to you, based on your experience of working in a secure facility and your knowledge of the nature of Prisoner A's offending. Furthermore, your oral evidence was inconsistent with previous statements you have provided to the NMC and implausible at points. The panel was not presented with any information from your probation officer about the discussions you have had and any insight you may have developed from them, or evidence of any personal development you may have undertaken in relation to your offending.

Accordingly, the panel is not satisfied that you have remediated your conduct. It is of the view that there is a real risk of repetition.

The panel has borne in mind that the overarching objectives of the NMC are to protect the public and uphold the public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding professional standards for members of those professions.

Although your conviction was unrelated to your nursing practice, the panel determined that a finding of impairment in the public interest is required. This is necessary to mark the seriousness of your offending, to declare and uphold proper standards of performance and conduct, and to maintain public confidence in the profession.

Having regard to all of the above, the panel is 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 your name from 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 to the NMC's published guidance on sanctions ('the SG'). The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Dunn informed the panel that in the Notice of Hearing dated 9 May 2023, the NMC had advised you that if the panel found your fitness to practise currently impaired, it would seek the imposition of a striking-off order.

Ms Dunn submitted that the only proportionate sanction in this case is a striking-off order. She proposed the following aggravating features:

- Your offence led to an immediate custodial sentence that was suspended for a significant period of time.
- Your offence falls into the NMC's definition of a 'specified offence' on the basis that it is a serious offence involving the interference with the administration of justice.
- Previous regulatory findings were made against you which involved Prisoner A. This suggests that you would have had an awareness of how the forensic mental health system worked and, in particular, prisoners' circumstances when you committed the offence.
- You have shown limited insight and have sought to deflect responsibility for your involvement in the offence.

Ms Dunn proposed that the personal mitigation raised during your evidence may be a mitigating feature. However, she reminded the panel that in accordance with the SG, personal mitigation is less relevant in regulatory proceedings than in criminal proceedings because regulatory proceedings are not intended to be punitive.

Ms Dunn submitted that taking no action would be inappropriate, in that this case involves a criminal conviction for a serious offence which led to a suspended custodial sentence. She submitted that whilst your conduct did not directly involve patient safety, it cannot be described as less serious and requires action to be taken. Ms Dunn submitted that your behaviour has called into question your professionalism and taking no action would fail to maintain public confidence in the profession. For similar reasons, Ms Dunn submitted that imposing a caution order would be inappropriate. As your conviction is unrelated to your clinical practice, Ms Dunn submitted that it would be very difficult to formulate conditions of practice that would address the conduct in this case.

Ms Dunn referred the panel to the factors in the SG which may suggest that a suspension order is the appropriate and proportionate order. She submitted that none of the factors are engaged in this case. Ms Dunn submitted that whilst the incident leading to your conviction may be considered a single incidence of misconduct, there is clear evidence of ongoing attitudinal problems. She submitted that in addition to your limited insight, you only self-referred to the NMC after you were sentenced, rather than when you were charged. Ms Dunn submitted that whilst you have engaged in these proceedings, you have not undertaken any significant reflective work.

Furthermore, Ms Dunn submitted that you have continued to go behind the judge's sentencing remarks and factual basis upon which you were sentenced and have also admitted that one of the statements you made in your self-referral to the NMC was untrue. Ms Dunn also referred the panel to your previous regulatory history, the circumstances of which relate to Prisoner A and are relevant to the current concern. She submitted that the previous findings are another example of where you have failed to act in a professional

manner and failed to ensure that your conduct justifies patients' and the public's trust in the profession.

Ms Dunn referred the panel to the factors in the SG which may suggest that a striking-off order is the appropriate and proportionate order. She submitted that all of these factors are engaged and reminded the panel of the principles established in *Fleischmann* as well as in *Bolton v The Law Society* [1994] WLR 512.

You denied that you had downplayed your role in your offending. You said that you had worked as a nurse without issue for the past four years, during which you have had time to reflect. You said you believe that you have shown remorse and did not know what else you could do to demonstrate it. You told the panel that you have done all that has been required of you. You told the panel that you loved your job. You loved working with patients and their relatives and making sure that patients get the best help available. You said that you made a mistake but making a mistake does not make someone a bad person. You told the panel that the last four years have been an “*absolute nightmare*” and you wanted to return to some sense of normality.

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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel endorsed the aggravating features of this case that were proposed by Ms Dunn. It also identified the following further aggravating features:

- You admitted that the account of events you gave in your self-referral to the NMC was false.
- As per *Fleischmann*, you have yet to complete your custodial sentence.

The panel did not identify any mitigating features in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in the light of the seriousness of the case. The panel determined that it would be disproportionate and not in the public interest to take no further action.

The panel then considered the imposition of a caution order but determined that, for the reasons outlined above, an order that does not restrict your practice would not be inappropriate 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 the seriousness of the circumstances leading to your conviction were not at the lower end of the spectrum and determined that a caution order would be inadequate.

The panel next considered whether placing conditions of practice on your registration would be an appropriate and proportionate response. As your conviction is unrelated to your clinical practice, the panel was not satisfied that workable conditions of practice could be formulated. Furthermore, the panel considered that imposing a conditions of practice order would fail to adequately address the seriousness of this case and would not be in the public interest.

The panel then considered whether a suspension order would be the proportionate 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 finds that none of these factors are engaged in this case.

Your behaviour, highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and a breach of the fundamental tenets of the profession. The previous regulatory findings related to this case significantly increase the risk of repetition. Whilst your conviction relates to a single, isolated incident, it involves the same prisoner as related to the previous misconduct and your criminal actions have had profoundly serious consequences. You have shown minimal insight into the circumstances that led to your offending, and the panel has heard evidence suggesting protracted, deep-seated attitudinal concerns. The panel determined that in all the circumstances, a suspension order would be inadequate.

Finally, in considering a striking-off order, the panel had regard to 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 represented a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel's findings in this case demonstrate that your offending is serious, and the panel is satisfied that to allow you to continue practising would greatly undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors, the panel has determined that the appropriate and proportionate sanction is that of a striking-off order. Having considered the effect of your behaviour 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 this would be sufficient in the particular circumstances of 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 Dunn submitted that, given the panel's reasons for imposing the striking-off order, an interim suspension order of 18 months is in the public interest. She submitted that public confidence in the profession would be seriously damaged if you were allowed to practise without restriction during the appeal period. Ms Dunn submitted that an interim order of 18 months was required to allow sufficient time for any appeal lodged to conclude.

You did not oppose the application.

Decision and reasons on interim order

The panel is satisfied that an interim order is in the public interest. It had regard to the seriousness of the case and the reasons set out in its decision on sanction in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate in this case, due to the reasons set out in its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months in order to maintain public confidence in the profession and in the NMC as its regulator. The panel determined that an 18-month period is required to allow sufficient time for any appeal lodged to conclude.

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.