

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

**Substantive Order Review Meeting
Tuesday, 14 November 2023**

Virtual Hearing

Name of Registrant: Barbara Harriet Clarke

NMC PIN 76Y2527E

Part(s) of the register: Adult Nurse

Relevant Location: London

Type of case: Misconduct

Panel members: Shaun Donellan (Chair, lay member)
Manjit Darby (Registrant member)
Susan Ellerby (Lay member)

Legal Assessor: Nigel Mitchell

Hearings Coordinator: Muminah Hussain

Order being reviewed: Conditions of practice order (12 months)

Fitness to practise: Impaired

Outcome: **Conditions of practice order (6 months)**

Decision and reasons on service of Notice of Meeting

The panel noted at the start of this meeting that the Notice of Meeting had been sent to Miss Clarke's registered email address by secure email on 5 October 2023.

The panel took into account that the Notice of Meeting provided details of the review namely it will take place no sooner than 13 November 2023, and that it will be held virtually. Miss Clarke was invited to submit written representations if she so chose. Further, she was informed she could also request a hearing at which she would be able to attend. The NMC has received no response to these communications.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Clarke 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).

Decision and reasons on review of the current order

The panel decided to extend the current conditions of practice order for 6 months. This order will come into effect at the end of 26 December 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the first review of a substantive conditions of practice order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 25 November 2023.

The current order is due to expire at the end of 26 December 2023.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charges found proved which resulted in the imposition of the substantive order were as follows:

‘That you, a registered nurse:

1. *On 7 February 2020, failed to administer 300mg of controlled drug Gabapentin at 18:00 to Patient E. **[Proved]***

2. *On 20 March 2020, failed to:*
 - a. *Escalate to senior management and/or a pharmacist that a GP had prescribed a controlled drug verbally over the telephone, contrary to Central London Community Trust’s Medicines policy. **[Proved]***
 - b. *Encourage Patient D to self-administer as they had their own supply of pain relief medication. **[Proved]***
 - c. *Complete a Datix entry to record that a verbal order for a controlled drug had been given. **[Proved]***

3. *On 8 April 2020, failed to administer Patient D’s daily dose of Warfarin at 18:00 and/or failed to escalate that Patient D had not received their dose of Warfarin for that day. **[Proved in part]***

4. *On 24 April 2020, failed to adequately complete a full skin assessment on Patient A in that you did not record 3 pressure areas. **[Proved]***

5. *On 24 April 2020, failed to document observations for the vital signs of Patient B and/or Patient C at 16.00 or as soon as possible after that time and/or failed to record that the notes which were documented were recorded some-time after 16.00. **[Proved]***

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

The original panel determined the following with regard to impairment:

'The panel next went on to decide if as a result of the misconduct, Miss Clarke's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must 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) ...'

The panel determined that limbs a, b and c in the above test were engaged in this case.

Taking into account all of the evidence adduced in this case, the panel found that patients were put at risk of serious harm as a result of Miss Clarke's misconduct. The panel was of the view that Miss Clarke's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel next went on to consider the matter of insight. It took into account Miss Clarke's reflective statement, dated 18 October 2020. The panel was encouraged that at the time of her reflection, Miss Clarke demonstrated apology, remorse, an acceptance of the concerns raised against her practice, and had already made good developments in her insight. However, the panel found that it was not presented with any further evidence to indicate Miss Clarke's present level of insight or attempts she may have made to remedy the identified failures in her practice, as Miss Clarke has disengaged with the NMC since 2020. The panel was of the view that Miss Clarke has not demonstrated a full understanding of how her actions put patients at a risk of serious harm or how this impacted negatively on her fellow team members and the reputation of the nursing profession. The panel therefore determined that Miss Clarke has not demonstrated full insight into the regulatory concerns.

The panel was satisfied that the misconduct in this case is capable of remediation. It had regard to a step taken by Miss Clarke to strengthen her practice, which was the completion of a record-keeping and documentation course, dated 19 October 2020. However, the panel bore in mind that the concerns in this case do not relate to any lack of competency of Miss Clarke, with regard to record-keeping and documentation, but rather her willingness to act appropriately in accordance with her competency and comply with professional standards in her clinical practice. Further, the panel considered that it has not received any other information to suggest that Miss Clarke has taken steps to address all the specific concerns raised about her practice in this case. The panel noted that Miss Clarke does not appear to have worked in a clinical setting since the referral. The panel therefore determined that the training course completed by Miss Clarke in October 2020 alone was not enough to demonstrate that she has strengthened her current practice.

The panel was of the view that there is a risk of repetition based on the lack of evidence of full insight, and lack of evidence that Miss Clarke has strengthened her practice. The panel had regard to the evidence of Witness 1 and Miss Clarke's own reflection, which outline issues regarding her health and personal circumstances at the time of the concerns. However, it noted that no further information or update has been put before it. The panel therefore considered that Miss Clarke's actions set out in the charges found proved demonstrated a pattern of behaviour that fails to acknowledge professional and clinical protocols, which led to unsafe practice. On the basis of all the information before it, the panel decided that there is a risk to the public if Miss Clarke was allowed to practise without restriction. The panel concluded that a finding of current impairment on public protection grounds is necessary.

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 Miss Clarke's fitness to practise impaired on the grounds of public interest.

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

The original panel determined the following with regard to sanction:

'Having found Miss Clarke's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- *Wide ranging misconduct which relates to fundamental nursing skills;*
- *A pattern of similar concerns over a period of time;*
- *Conduct which put patients at a risk of suffering harm and caused actual harm by leaving a patient in pain.*

The panel also took into account the following mitigating features:

- *Miss Clarke's health at the relevant time;*

- *Evidence to indicate that Miss Clarke was overwhelmed by being newly appointed to a band 6 position;*
- *Early admissions at local level investigation, remorse and apology.*

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 not protect the public or satisfy 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 Miss Clarke's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where 'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that Miss Clarke's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Clarke's registration would be a sufficient and appropriate response. The panel is mindful that

any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*

- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems...;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered that there is no evidence of harmful deep-seated attitudinal problems, there are identifiable areas of Miss Clarke's clinical practice capable of re-training and there is no evidence of general incompetence. Although the concerns span a period of time, the panel accepted that it was a time when Miss Clarke was struggling both with her health and with greater professional responsibilities than she had been used to previously. The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel was of the view that a conditions of practice order would give Miss Clarke the opportunity to demonstrate that she is capable of safe and effective practice, while protecting patients.

The panel also had regard to the fact that in Miss Clarke's 2020 reflective piece she demonstrated good developing insight, had acknowledged her health issues, and had showed a willingness to respond to further training. The panel was of the view that it was in the public interest that, with appropriate safeguards, Miss Clarke should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable

response in the circumstances of Miss Clarke's because it would be unduly punitive. The panel determined that public confidence in the profession would not be undermined by the imposition of a conditions of practice order. Although the panel was disappointed that Miss Clarke has disengaged from the fitness to practise process, it considered that at an early stage after the concerns came to light in 2020 Miss Clarke was already demonstrating good developing insight, had acknowledged her health issues and had taken a step towards strengthening her practice through training. Therefore, a suspension or a striking-off order would be disproportionate and would not allow Miss Clarke the opportunity to further strengthen her practice.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

- 1. You must limit your practice to that of a band 5 nurse.*
- 2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:*
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.*

- *Monthly meetings to discuss your clinical caseload.*
3. *You must work with a designated supervisor who is a registered nurse to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, care of deteriorating patients, care of integument, tissue viability, record keeping and information governance. You must:*
- a) *Send your case officer a copy of your PDP two weeks after starting a role.*
 - b) *Meet with your designated supervisor monthly to discuss your progress towards achieving the aims set out in your PDP.*
 - c) *Send your case officer a copy of your PDP with comments from your designated supervisor every four months.*
4. *You must keep the NMC informed about anywhere you are working by:*
- a) *Telling your case officer within seven days of accepting or leaving any employment.*
 - b) *Giving your case officer your employer's contact details.*
5. *You must keep the NMC informed about anywhere you are studying by:*
- a) *Telling your case officer within seven days of accepting any course of study.*
 - b) *Giving your case officer the name and contact details of the organisation offering that course of study.*
6. *You must immediately give a copy of these conditions to:*
- a) *Any organisation or person you work for.*
 - b) *Any agency you apply to or are registered with for work.*

- c) *Any employers you apply to for work (at the time of application).*
- d) *Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*
- e) *Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity*

7. *You must tell your case officer, within seven days of your becoming aware of:*

- a) *Any clinical incident you are involved in.*
- b) *Any investigation started against you.*
- c) *Any disciplinary proceedings taken against you.*

8. *You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

- a) *Any current or future employer.*
- b) *Any educational establishment.*
- c) *Any other person(s) involved in your retraining and/or supervision required by these conditions*

The period of this order is for 12 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Clarke has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- *Miss Clarke's attendance at a future review hearing;*

- *Update from the designated supervisor (as above) and a copy of Miss Clarke's PDP;*
- *Evidence that Miss Clarke has fulfilled, or is working towards, remedying the concerns set out in her PDP;*
- *References and testimonials relating to Miss Clarke's clinical practice;*
- *An updated reflective statement from Miss Clarke, which covers the identified failures in her practice, insight into why these failures occurred, what she might do differently in the future in similar circumstances, and strategies she has put in place to manage the impact of her health on patient safety;'*

Decision and reasons on current impairment

The panel has considered carefully whether Miss Clarke's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle.

The panel heard and accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Clarke's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Clarke had developing insight. At this meeting, the panel noted that there had been no evidence of further insight from Miss Clarke as she has not engaged with these proceedings.

In its consideration of whether Miss Clarke has taken steps to strengthen her practice, the panel took into account that there has been no evidence provided to it to determine whether she has strengthened her practice. Indeed, Miss Clarke has not been in contact with the NMC since October 2020.

The original panel determined that Miss Clarke was liable to repeat matters of the kind found proved. Today's panel has received no new information on this matter. In light of this the panel therefore decided that a finding of continuing impairment is necessary on the grounds of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that Miss Clarke's fitness to practise remains impaired.

Decision and reasons on sanction

Having found Miss Clarke's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

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 Miss Clarke's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Clarke's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a further conditions of practice order on Miss Clarke's registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case.

The panel was of the view that a further conditions of practice order is sufficient to protect patients and the wider public interest, noting as the original panel did that there are no deep seated attitudinal problems, there are identifiable areas of Miss Clarke's clinical practice capable of retraining and there is no evidence of general incompetence. In this case, there are conditions could be formulated which would protect patients during the period they are in force.

The panel was of the view that to impose a suspension order or a striking-off order would be disproportionate at this stage.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to make a conditions of practice order for a period of 6 months, which will come into effect on the expiry of the current order, namely at the end of 26 December 2023. It decided to impose the following conditions which it considered are appropriate and proportionate in this case:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must limit your practice to that of a band 5 nurse.
2. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of:
 - Working at all times on the same shift as, but not always directly observed by a registered nurse.
 - Monthly meetings to discuss your clinical caseload.
3. You must work with a designated supervisor who is a registered nurse to create a personal development plan (PDP). Your PDP must address the concerns about medicines management, care of deteriorating patients, care of integument, tissue viability, record keeping and information governance. You must:
 - a) Send your case officer a copy of your PDP two weeks after starting a role.
 - b) Meet with your designated supervisor monthly to discuss your progress towards achieving the aims set out in your PDP.
 - c) Send your case officer a copy of your PDP with comments from your designated supervisor every four months.
4. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
5. You must keep the NMC informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
6. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any agency you apply to or are registered with for work.
 - c) Any employers you apply to for work (at the time of application).
 - d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity
7. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for 6 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 26 December 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Clarke has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

The panel was concerned that there had been no engagement with the NMC from Miss Clarke since the imposition of the original conditions of practice order. The panel had no information about Miss Clarke's current circumstances and whether she was in employment and wishes to remain on the register.

Any future panel reviewing this case would be assisted by:

- Miss Clarke's attendance at a future review hearing;
- Update from the designated supervisor and a copy of Miss Clarke's PDP;
- Evidence that Miss Clarke has fulfilled, or is working towards, remedying the concerns set out in her PDP;
- References and testimonials relating to Miss Clarke's clinical practice;
- An updated reflective statement from Miss Clarke, which covers the identified failures in her practice, insight into why these failures occurred, and what she might do differently in the future in similar circumstances;
- An update on future intentions with regard to remaining on the register.

This will be confirmed to Miss Clarke in writing.

That concludes this determination.