Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Meeting

24 June 2020

Virtual Hearing

Name of registrant:	Ms Selina Clarke
NMC PIN:	05G0741O
Part of the register:	Nurse Prescriber (2014)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Peter Swain (Chair, lay member) Anna Guildford (Registrant member) Jane McLeod (Lay member)
Legal Assessor:	John Caudle
Panel Secretary:	Leigham Malcolm
Charges proved by admission:	All charges found proved by admission
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim Order:	Interim Suspension Order (18 months)

Details of charges

That you a registered nurse, having worked at BMI Sandringham Hospital when Patient A was an in-patient between 22 and 27 December 2005:

1. Accepted money from Patient A between approximately 2006 and 2015 which includes:

a) 2008 – a sum of approximately £10,000.00 - £15,000.00
b) 2010-2012 – a sum of approximately £6,000.00 - £7-000.00
c) 02/07/2010 - $19,000.00
d) 31/12/2010 - £3552.00
e) 31/04/2011 - £780.00
f) 03/02/2011 – 1560.00
g) 08/03/2011 - £179.00
h) 06/04/2011 - £200.00
i) 30/04/2011 - £200.00
j) 17/05/2011 - $20,000.00
k) 01/07/2011 - £300.00
l) 20/07/2011 - £300.00
m) 29/08/2011 - £700.00
n) 03/11/2011 - £640.00
o) 11/02/2012 - £600.00
p) 08/03/2012 - £500.00
q) 17/04/2012 - $3,200.00
r) 06/05/2012 - £660.00
s) 08/07/2012 - £1350.00
t) 17/07/2012 - £750.00
u) 01/09/2012 - £550.00
v) 05/10/2012 - £50.00
w) 12/10/2012 - £50.00

x) 19/10/2012 - £50.00

y) 26/10/2012 - £50.00

z) 02/11/2012 - £1500.00

aa)10/12/2012 - £435.00

bb)10/11/2012 - £435.00

cc) 07/01/2013 - £300.00

dd)21/01/2013 - £435.00

ee)08/02/2013 - $3,000.00

ff) 20/02/2013 - £435.00

gg)28/02/2013 - $3,000.00

hh)20/03/2013 - £360.00

ii) 03/04/2013 - £435.00

jj) 26/03/2013 - £870.00

kk) 23/05/2013 - $45,000.00

ll) 07/06/2013 - £600.00

mm) 02/07/2013 - £500.00

nn)26/08/2013 - £1200.00

oo)30/12/2013 - £2000.00

pp)08/02/2014 - £500.00

qq)18/07/2014-02/08/2014 - £10,000.00

rr) 25/08/2014 - £1000.00

ss) 19/10/2014 - £100.00

tt) 03/12/2014 - £1200.00

uu)19/01/2015 - £1000.00

vv) 06/03/2015 - £1000.00

ww) 08/04/2015 - £1500.00

xx) 22/05/2015 - £2000.00

yy) 14/08/2015 - £1050.00

2. Used and/or permitted another to use Patient A’s bank card to make debit card purchases in Italy on:

a) 03/08/2006 - $76.24

b) 07/08/2006 - $74.49

c) 08/08/2006 - $13.54

d) 08/08/2006 - $13.54

e) 08/08/2006 - $54.65

f) 08/08/2006 - $91.08

g) 14/08/2006 - $5.29

h) 14.08.2006 - $7.87

3. Used and/or permitted another to use Patient A's bank card as follows:

a) 08/01/2009 - $111.37

b) 08/01/2009 - $167.76

c) 13/01/2009 – $106.09

4. Used and/or permitted another to use Patient A's bank card as follows:

a) 31/08/2010 - $301.50

b) 02/09/2010 - $302.00

c) 02/09/2010 - $47.05

d) 02/09/2010 – $62.35

e) 03/09/2010 - $300.00

f) 08/09/2010 - $120.75

5. Knowingly allowed your daughter to receive and/or did not take steps to return once known, money from Patient A which included:

a) Approximately £5,000.00 in 2013.

b) Approximately £1,000.00 in February 2014.

c) Approximately £2,000.00 in 2015.

6. Permitted a familial relationship between

a) Yourself and Patient A

b) Your daughter and Patient A

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a) Yourself and Patient A

b) Your daughter and Patient A

7. Your conduct at Charges 1 and/or 2 and/or 3 and/or 4 and/or 5 demonstrates a lack of integrity in that you accepted and/or accessed Patient A’s money for your own or another’s gain.

8. Your conduct at Charges 1 and/or 2 and/or 3 and/or 4 and/or 5 and/or 6 breached professional boundaries.

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

Decision on service of notice of meeting

The panel was informed that notice of today's virtual meeting had been sent to Ms Clarke on 18 May 2020. The panel was also informed that it was Ms Clarke who had requested that her case be heard at a substantive meeting and that she had provided documents to the Nursing and Midwifery Council (NMC) for the panel's consideration today.

The panel accepted the advice of the legal assessor and, in view of all of the information available, it was satisfied that Ms Clarke has been served with notice of this meeting in accordance with the requirements of Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).

Decision on proceeding in the absence of Ms Clarke

The panel next considered whether it should proceed in the absence of Ms Clarke.

The panel accepted the advice of the legal assessor.

Given that it was Ms Clarke who requested that her case be heard at a substantive meeting, and that she had provided documents for the panel to consider, the panel was satisfied that she was aware of today's meeting and content for it to proceed in her absence.

The panel was of the view that Ms Clarke's position with regard to attendance was very unlikely to change in the event that the panel was to adjourn today's meeting to a later date. The panel therefore decided to proceed in Ms Clarke's absence.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all of the evidence submitted in this case including the NMC's evidence bundle and Ms Clarke's written statement dated 15 June 2020, as well as the submissions made by Ms Clarke to the Investigation Committee in September 2017. The panel has also accepted the advice of the legal assessor.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The charges arose from Ms Clarke's employment as a registered nurse at BMI Sandringham Hospital (the Hospital). It is alleged that Ms Clarke accepted money between 2006 and 2015 from Patient A. It is not known how much Ms Clarke accepted but she has admitted to an amount totalling well over £100,000.

Patient A was an elderly blind gentleman and lived in an annexe to his son's house. Ms Clarke provided care to Patient A while he was an inpatient at the Hospital between 22 and 27 December 2005. After Patient A was discharged from the Hospital, it is alleged that Ms Clarke visited him in his home regularly from February 2006 – January 2017, until his son raised a complaint to Norfolk Police. The police investigated the complaint and did not proceed to a prosecution. Patient A was diagnosed with vascular dementia and Alzheimer's disease in October 2014 followed by terminal cancer the next year. Patient A passed away in 2017.

Patient A's son asserted that Ms Clarke had fraudulently taken money from his father by writing unauthorised cheques to her account, withdrawing money from Patient A's bank accounts and also transferring money directly into her own bank account.

The regulatory concerns in this case are that Ms Clarke failed to maintain professional boundaries in relation to Patient A, who was under her care in December 2005. It is alleged that Ms Clarke permitted a familial relationship to develop between herself and Patient A, and also her daughter and Patient A. It is alleged that Ms Clarke's actions in accepting money from Patient A demonstrates a lack of integrity given that she accepted the money for her own or another's gain. It is also alleged that Ms Clarke's conduct breached professional boundaries.

At the outset of the meeting, the panel took account of Ms Clarke's full admissions to the charges against her. The panel accepted Ms Clarke's admissions and found the charges proved in their entirety, by way of her admissions.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether those facts if found proved amount to misconduct and, if so, whether Ms Clarke's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Ms Clarke's fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct and impairment

The NMC submitted that the conduct in charges 1 – 5 demonstrated a lack of integrity as would be expected by the public of a registered nurse. It stated that integrity is fundamentally about doing the right thing even when no one is looking. Nurses occupy a position of privilege and trust in society and are expected at all times to act with integrity and abide by the Code of Conduct in place at the time. While neither the NMC nor the public can set unrealistically high standards, professional boundaries and the giving and receiving of money between patients (past or present) and nurses are topics covered in the Codes of Conduct which span the length of time involved in these charges. The NMC submitted that there is no evidence to suggest that Ms Clarke raised the fact that she was accepting/receiving money from Patient A with Patient A's son or any senior colleagues.

The NMC submitted that the conduct in charges 1-6 breached professional boundaries. The NMC stated that Patient A first met Ms Clarke when he was an inpatient recovering from an operation in hospital between 22 and 27 December 2005. Records from the hospital indicate that this was the only time Patient A had contact with Ms Clarke in a professional capacity. Patient A was considered vulnerable during his admission due to being totally blind.

The NMC reminded the panel that in deciding whether Ms Clarke's fitness to practise is impaired by reason of misconduct the correct course is to embark upon a two stage process set out in the case of Cheatle v General Medical Council [2009] EWHC 645.

First, the panel should consider whether the facts found proved amount to misconduct. If the panel determine that the facts found proved amount to misconduct, they should next proceed to decide whether Ms Clarke's fitness to practise is currently impaired. In determining these questions there is no burden or standard of proof, it is entirely a question for the panel's professional judgment as per Council for the Regulation of Health Care Professionals v (1) General Medical Council (2) Biswas [2006] EWHC 464

(Admin)).

The NMC further stated that the panel's overarching objective in reaching a decision is the protection of the public. Public protection is defined as a real risk to patients and/or colleagues and/or other members of the public in the registrant continuing in the role. A vital part of public protection is encouraging people to use the services of nurses and midwives and in doing this, it is important that the Panel recognises its obligation to also uphold public interest. Public Interest includes:

a) the need to declare and uphold proper standards of conduct and
b) the need to maintain confidence in the profession and also in the NMC as a regulator.

The NMC invited the panel to find Ms Clarke's fitness to practise impaired on the grounds of public protection, to serve the public interest and to declare and uphold proper professional standards. It explained that allowing Ms Clarke to practise unrestricted when she had failed to demonstrate the necessary level of professional integrity and breached professional boundaries would be a cause of serious concern to members of the public.

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant, these included: Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, Nandi v GMC [2004] EWHC 2317 (Admin), and GMC v Meadow [2007] QB 462 (Admin).

Decision on misconduct

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the

circumstances, Ms Clarke's fitness to practise is currently impaired as a result of that misconduct.

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The code: Standards of conduct, performance and ethics (2004),* a later revised version in 2008, and a later revised version*, The Code: Professional standards of practice and behaviour for nurses and midwives* (2015).

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that Ms Clarke's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the three Codes identified. Specifically:

The 2004 Code:

> *'1.2 As a registered nurse, midwife or specialist community public health nurse, you must:*
>
> > *• act in such a way that justifies the trust and confidence the public have in you*
> > *• uphold and enhance the good reputation of the professions.*
>
> *2.3 You must, at all times, maintain appropriate professional boundaries in the relationships you have with patients and clients. You must ensure that all aspects of the relationship focus exclusively upon the needs of the patient or client.*
>
> *7. As a registered nurse, midwife or specialist community public health nurse, you must be trustworthy*

7.1 You must behave in a way that upholds the reputation of the professions. Behaviour that compromises this reputation may call your registration into question even if is not directly connected to your professional practice.

7.4 You must refuse any gift, favour or hospitality that might be interpreted, now or in the future, as an attempt to obtain preferential consideration.

7.5 You must neither ask for nor accept loans from patients, clients or their relatives and friends.'

The 2008 Code:

'The people in your care must be able to trust you with their health and wellbeing

To justify that trust, you must:

• make the care of people your first concern, treating them as individuals and respecting their dignity
• be open and honest, act with integrity and uphold the reputation of your profession.

Maintain clear professional boundaries

18. You must refuse any gifts, favours or hospitality that might be interpreted as an attempt to gain preferential treatment.

19. You must not ask for or accept loans from anyone in your care or anyone close to them.'

The 2015 Code:

‘17. Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must;

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

19. You must not ask for or accept loans from anyone in your care or anyone close to them.’

The panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct. It accepted that Patient A encouraged the relationship. However, the panel bore in mind that whilst Patient A was in the Hospital Ms Clarke was responsible for providing care to him, and that their relationship was purely a professional one. The panel was of the view that the expectation would have been for Ms Clarke to act with integrity and maintain a purely professional relationship with Patient A, despite any efforts by Patient A to change the dynamic of their relationship. Ms Clarke’s assertion that Patient A chose the role of dad to her on their first encounter should have been a very clear warning sign about the risk of contravening professional boundaries.

The panel bore in mind that Patient A was already vulnerable and that he grew more vulnerable as his health deteriorated and he was formally diagnosed with Alzheimer’s disease. It was particularly concerning to the panel that Ms Clarke failed to appreciate the significance of Patient A’s pre-existing vulnerabilities and subsequent diagnosis, and the seriousness of her actions in maintaining a relationship with a former patient from which she gained financially. Ms Clarke was a professional registered nurse trusted by Patient A and his family. The panel was of the view that Ms Clarke should have realised

that it was improper to accept monetary gifts from a former patient, and even more so after he had been diagnosed with Alzheimer's disease. The deterioration in Patient A's cognitive function was apparent to his family and his GP, resulting in a referral to a mental health specialist. Yet Ms Clarke continued to accept substantial gifts leading up to and beyond the point of this diagnosis. Further, it considered the number of transactions over such a protracted period of time to add to the seriousness of Ms Clarke's misconduct.

For these reasons the panel decided that Ms Clarke's behaviour fell seriously short of the conduct and standards expected of a nurse and amounted to serious misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct Ms 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 and to maintain professional boundaries. 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 be honest and open and 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 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 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.'

Mrs Justice Cox went on to say in Paragraph 76:

> *'I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from* Shipman*, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.*
>
> > *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 took account of Ms Clarke's reflection. It noted her remorse and the evidence from her solicitor that she had entered into an agreement that involved *'paying sums of money to the estate'* of the late Patient A. However, the panel found that Ms Clarke failed to sufficiently reflect on the particular vulnerabilities of Patient A. Ms Clarke did not demonstrate that she fully appreciated the context in which she was accepting significant monetary gifts from Patient A and continuing to gain financially. Ms Clarke failed to demonstrate through her reflective piece the level of insight that the panel expected to see, given her egregious conduct. The panel considered that a registered nurse should have a greater understanding of the need to safeguard a vulnerable person than a member of the public. Notwithstanding any generosity or kindness between the parties in the relationship, or the changed nature of the relationship following Patient A's discharge from hospital, this safeguarding duty should have been exercised by Ms Clarke throughout the relationship and certainly as his cognitive state declined leading up to and following his diagnosis for Alzheimer's disease.

The panel acknowledged that Ms Clarke had paid for an online course relating to professional boundaries. However, it had no certificate of completion and nor was there any evidence that Ms Clarke had reflected on any learning as a result of the course. There is also no evidence of any other learning activity relevant to her misconduct. The panel was therefore not satisfied that Ms Clarke had sufficiently reflected upon and remediated her misconduct.

The panel is of the view that there is a risk of repetition based on Ms Clarke's limited insight. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which 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 determined that, in

this case, a finding of impairment on public interest grounds was also required, given the serious and prolonged nature of her misconduct. The panel was of the view that the public would be appalled if a finding of impairment were not made in these circumstances.

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

Determination on sanction

The panel has considered this case and has decided to make a striking-off order. It directs the registrar to strike Ms Clarke off the register. The effect of this order is that the NMC register will show that Ms Clarke has 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. The panel accepted the advice of the legal assessor. 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 Sanctions Guidance ("SG") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the need to protect the public. 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 considered that Ms Clarke's misconduct was not at the lower end of the spectrum and that a caution order would also be inappropriate in view of the seriousness of the case and the need to protect the public. 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 Ms 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 reached the view that there are no practical or workable conditions that could be formulated, given the nature of the findings in this case. The panel bore in mind that the issues related to Ms Clarke's integrity and concerned her failure to identify and fully appreciate Patient A's specific vulnerabilities, and to safeguard his interests. The panel decided that these issues could not be addressed by a conditions of practice order.

Furthermore the panel concluded that the placing of conditions on Ms Clarke's registration would not address the seriousness of this case, would not protect the public, neither would it adequately address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel considered the aggravating factors in this case. It considered Patient A to have been vulnerable in a number of ways and that Ms Clarke continued to gain financially from her relationship with him over a period of 12 years. A particularly aggravating factor was that Ms Clarke continued her misconduct, in accepting monetary gifts and gaining financially, subsequent to Patient A being diagnosed with Alzheimer's disease. The panel noted the mitigating factor in this case to be Ms Clarke's remorse.

The conduct, as highlighted by the facts found proved, was a serious departure from the standards expected of a registered nurse. The panel determined that the repeated lack of integrity demonstrated by Ms Clarke over the period covered by the charges is fundamentally incompatible with her remaining on the register.

In the circumstances of this case, the panel has determined that a suspension order would be insufficient to address the serious concerns around patient safety, the reputation of the nursing profession, and upholding proper professional standards.

Finally, the panel considered a striking off order. Ms Clarke's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with Ms Clarke remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Clarke's actions were serious and to allow Ms Clarke to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Clarke's 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 this 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.

Determination on interim order

The panel has considered the submissions made by the NMC that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.