

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

Substantive Hearing

08 – 10 January 2020

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Jacqueline Ruth Liken
NMC PIN:	93I2220E
Part(s) of the register:	Part of register Registered Nurse – Sub part 1 Adult Nursing (15 March 1997)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Ian Luder (Chair, Lay member) Judith McCann (Registrant member) Richardo Childs (Lay member)
Legal Assessor:	Charles Apthorp
Panel Secretary:	Roshani Wanigasinghe
Miss Liken:	Not present and not represented in absence
Nursing and Midwifery Council:	Represented by David Claydon, Case Presenter
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Details of charge

That you a registered nurse,

1. On a number of occasions between February – July 2018, failed to maintain professional boundaries with Student A in that you:
 - a) On 6 February 2018, emailed Student A with **[PRIVATE]** mobile number
 - b) On an unknown date, allowed/ and or encouraged **[PRIVATE]** to pick Student A up in his car
 - c) On an unknown date, allowed Student A to visit you at home
 - d) On one or more occasions (as set out in Schedule 1) you and/or **[PRIVATE]** communicated with Student A
 - e) Failed to follow an instruction to cease contact with Student A

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

Schedule 1

[PRIVATE]

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Liken was not in attendance and that written notice of this hearing had been sent to Miss Liken's registered address by recorded delivery and by first class post on 27 November 2019. Royal Mail's Track and Trace system shows that the recorded delivery notice was returned to the NMC on 23 December 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Liken's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Claydon, on behalf of the Nursing and Midwifery Council (NMC) submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Liken has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Mr Claydon invited the panel to continue in the absence of Miss Liken. He submitted that the NMC had attempted to ascertain Miss Liken's telephone number but has been unable to do so as a contact number has not been provided on the NMC data base.

Mr Claydon drew the panel's attention to two emails dated 6 December 2019 and 30 December 2019 sent to Miss Liken's last known email address. There is no evidence before the panel that these emails had bounced back as undeliverable. The NMC had requested confirmation of whether Miss Liken would be in attendance at this hearing, without response. He submitted that the NMC has made every effort to contact Miss Liken, however has been unsuccessful in doing so. Mr Claydon advised that the NMC had prepared for this hearing and had three witnesses in attendance prepared to give evidence. He submitted that there is a strong public interest in the expeditious disposition of the charges.

My Claydon invited the panel to continue in the absence of Miss Liken on the basis that she had voluntarily absented herself.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R. v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Liken. In reaching this decision, the panel has considered the submissions of Mr Claydon, the NMC's emails and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Liken;
- Three witnesses are in attendance today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, the clients who need their professional services;
- The charges set out in this case are serious and involve a vulnerable young child;
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Liken in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address, she will not be able to challenge this evidence at the hearing or give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Moreover, Miss Liken's email of 14 June 2018 set out her position in relation to the allegations, which the panel can take into account when making its findings.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Liken. The panel will draw no adverse inference from Miss Liken's absence.

Decision and reasons on application under Rule 19

Mr Claydon, indicated that proper exploration of this case involves reference to Miss Liken's health and family circumstances and requested that this hearing should be heard in private in its entirety. The application was made pursuant to Rule 19 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.

Rule 19 states

- 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
- (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.
 - (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—
 - (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

The legal assessor explored whether this hearing could be heard partly in private.

Mr Claydon submitted that Miss Liken’s personal circumstances are inextricably linked with the case and therefore there would be difficulty separating matters, and furthermore that Student A may be easily identifiable due to the vulnerabilities being somewhat unique. Mr Claydon submitted however that the panel may explore hearing this case in public after the ‘facts stage’ if it is deemed appropriate.

Having heard that there will be reference to Miss Liken’s personal and family matters as well as identifiable concerns with regards to Student A, the panel determined to hold the hearing in private and to review this decision at the end of facts stage.

Decision and reasons on application under Rule 19

Before hearing submissions on misconduct and impairment, the panel revisited the consideration on Rule 19 and whether there is still a need to hold this hearing in private.

Mr Claydon submitted that there is still a need to hold this hearing in private in order to maintain the privacy of Student A. He submitted that he was able to move between the public and private matters.

The panel heard the advice of the legal assessor.

The panel noted that a proper exploration of this case requires reference to the nature of Student A's unique circumstances and the panel was conscious of the need to protect Student A from being identified. In the light of this, the panel has determined that it is appropriate to hold the remaining stages of this hearing in private.