

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

**Substantive Hearing
2 – 3 February 2021**

Virtual Hearing

Name of registrant: **Laura Catherine Cooper (nee Howe)**

NMC PIN: 09A0207E

Part(s) of the register: Registered Nurse – Sub Part 1
RNC: Children’s Nurse – 10 February 2009

Area of registered address: North Yorkshire

Type of case: Conviction/health

Panel members: John Vellacott (Chair, lay member)
Janine Ellul (Registrant member)
Kevin Connolly (Lay member)

Legal Assessor: Monica Daley

Panel Secretary: Tara Hoole

Nursing and Midwifery Council: Represented by Michael Smalley, Case Presenter

Mrs Cooper (nee Howe): Present and represented by Thomas Buxton,
instructed Royal College of Nursing (RCN)

Facts proved: Charges 1 and 2

Facts not proved: None

Fitness to practise: Impaired by reason of conviction

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on application for hearing to be held in private

At the outset of the hearing Mr Smalley, on behalf of the Nursing and Midwifery Council (NMC), made a request that the hearing of your case be held partly in private. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules). The application was made on the basis that proper consideration of the case involves reference to your health.

Mr Smalley told the panel that this case involves a conviction charge as well as a health charge. He highlighted that cases involving health matters would ordinarily be held entirely in private. However, Mr Smalley submitted that there was a public interest in the conviction parts of this case being heard in public. He therefore proposed that the details of the conviction be heard in public but that any other details relating to your health be heard in private.

Mr Buxton, on your behalf, submitted that the entire hearing should be held in private. He submitted it was plain from the documentation that the case is inextricably linked with matters of your health. He said these were serious health matters which started in childhood and have a bearing on the matter of the conviction and the impact on your later life. He submitted that the matter has been ventilated in public by virtue of the criminal proceeding which satisfies any public interest. He submitted that your right to privacy outweighs the public interest in the hearing being held in public. Mr Buxton therefore submitted that the entire hearing should be in private.

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 (2) states that hearings which relate solely to an allegation concerning the registrant's physical or mental health must be conducted in private, 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 considered that this case involves matters which are inextricably linked to your health and your interests outweighed those of the public. The panel decided that the facts of your conviction could be separated from the majority of the health matters discussed in the hearing. The panel considered that the public interest could be addressed by the matter of your conviction being held in public. The panel therefore determined to hold the entire hearing in private, with the exception of the facts of your conviction which it determined should be heard in public.

Details of charge

'That you, a Registered Nurse,

- 1) On 30 July 2019, at North Tyneside Magistrates' Court, were convicted of the following offences:
 - a) Theft by Employee; **(Proved by admission)**
 - b) Expose for sale/supply an adulterated medicinal produce; **(Proved by admission)**
- 2) [Private]

And, in light of the above, your fitness to practise is impaired by reason of your conviction in respect of charge 1 and by reason of your health in respect of charge 2.

[PRIVATE]

Decision and reasons on application of no case to answer

The panel considered an application from Mr Buxton, on your behalf, that there is no case to answer in respect of charge 2. This application was made under Rule 24(7).

[PRIVATE]

Mr Buxton further submitted that there was no case to answer in respect of impairment in the context of the health concerns identified under Schedule 1. This application was made under Rule 24(8).

[PRIVATE]

In respect of the application under Rule 24(8) Mr Smalley submitted that impairment is a global consideration for the panel to take into account. He reminded the panel that you admit current impairment in respect of your conviction and invited the panel to reject this application.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. She referred it to the case of *R v Galbraith* [1981] 1WLR 1039, *Sharaf v GMC* [2013] EWHC 332 Admin and *R(Dr Alan Tutin) v GMC* [2009] EWHC 553 Admin.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

[PRIVATE]

The panel was of the view that there had been sufficient evidence provided to support the charges at this stage such that, if taken at its highest, a properly directed panel *could* find the charge proved.

The panel was therefore not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

In respect of the application under 24(8) the panel considered that having found that factually there is a case to answer in regard to charge 2, the appropriate place to consider a no case to answer submission on impairment is in the round at the appropriate stage of proceedings.

Background

The charges arose whilst you were employed as a registered nurse on the children's paediatric ward (the Ward) at the Royal Victoria Infirmary Hospital (the Hospital) by The Newcastle upon Tyne Hospitals NHS Foundation Trust (the Trust).

Between October 2016 and March 2018 a discrepancy was uncovered in relation to the stock levels of codeine on the Ward. It was found that the liquid codeine stock levels were unaccountably diminishing on a regular basis and the liquid codeine appeared diluted. CCTV was installed in the medicines administration room as part of the investigation into this. Over a two week period this showed that you were taking and consuming codeine and Oramorph and were tampering with the codeine by way of diluting the remaining contents.

You were arrested on 14 March 2018.

You self-referred to the NMC on 20 March 2018.

You were convicted of the following at North Tyneside Magistrates Court on 31 July 2019:

- a) Theft by employee
- b) Expose for sale/supply an adulterated medicinal product

You were dismissed by the Trust on 2 August 2018.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Buxton, on your behalf, who informed the panel that you admitted charge 1.

The panel therefore finds charge 1 proved by way of your admission. In addition, charge 1 concerns your conviction and, having been provided with a copy of the certificate of conviction, the panel found that the facts at charge 1 are also found proved in accordance with Rule 31 (2) and (3).

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Smalley on behalf of the NMC and by Mr Buxton, on your behalf.

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 a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard oral evidence from the following witness called on behalf of the NMC:

- Dr 1

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the oral witness evidence and the documentary evidence provided by both the NMC and you.

The panel considered the evidence of the witnesses and made the following conclusions:

Dr 1: The panel considered the evidence of Dr 1 to be credible and reliable. He was professional and did his best to assist the panel, he accepted where he could not give definitive answers and provided useful information to the panel.

The panel considered your evidence. The panel considered you to be credible and reliable. You were open and honest in your account. You gave a fair presentation of the issues and did your best to assist the panel.

The panel then considered the disputed charge and made the following findings.

Charge 2

2) [PRIVATE]

This charge is found proved.

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 and/or your health. There is no statutory definition of fitness to practise.

However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Submissions on impairment

In reaching its decision, the panel bore in mind Rule 31(5) and considered all the documentary evidence adduced in this case together with the submissions made by Mr Smalley and Mr Buxton.

Mr Smalley addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Mr Smalley invited the panel to consider the issue of impairment in the round taking into consideration both the conviction and health matters in reaching its decision.

Mr Smalley submitted that there are some forms of behaviour which are so serious that they cannot be remedied and that this case fell into this category. He submitted that there was a significant breach of trust over an extended period of time, there were attempts to cover this up which resulted in you knowingly placing patients at a risk of unwarranted harm.

[PRIVATE]

Mr Smalley submitted that the panel should consider not only whether you continue to present a risk but also whether public confidence would be undermined if a finding of impairment were not made. He submitted that members of the public would be horrified by

your actions in that over the course of a year you stole medication meant for children, you covered this up by doctoring medication and thereby placed a significant number of patients at a risk of harm.

Mr Smalley therefore invited the panel to find that your fitness to practise is impaired.

Mr Buxton conceded that a finding of impairment is necessary on public interest grounds. However, he submitted that there is a broader picture and set of circumstances which need to be considered. He submitted that his principle submission is that, but for personal mitigation and difficulties, you would not have come to the attention of your regulator. He reminded the panel that your clinical skills have not been called into question.

In terms of whether your conduct is remediable, Mr Buxton submitted that, if it is accepted that the health conditions are a catalyst in this case, then your conduct can be said to be remediable. [PRIVATE]

Mr Buxton acknowledged that dishonesty is extremely serious, which is also acknowledged by you. He submitted that in your case the panel may take the view that it is remediable taking your actions in the context of the health conditions. He pointed the panel to Dr 1's evidence in which he said that the risks associated had diminished significantly.

Mr Buxton submitted that you are not impaired by reason of your health.

Mr Buxton highlighted the documents in your remediation bundle prepared for this hearing. [PRIVATE]

Mr Buxton further highlighted the testimonials provided on your behalf. He submitted that you have shown insight, [PRIVATE] and that there is no ongoing risk to the public.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

[PRIVATE]

The panel considered that a finding of impairment was not necessary on public protection or public interest grounds on the basis of your health conditions.

The panel next 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 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 judgment of Mrs Justice Cox in the case of *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) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel considered that all four limbs of the test set out in *Grant* were engaged in your case. The panel found that patients were put at risk of unwarranted harm as a result of the conduct which led to your conviction. The panel considered that your behaviour had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that you have shown some insight. The panel noted that you are remorseful for your conduct and have clearly reflected on the events which led to your conviction. The panel considered that you have made significant progress in terms of addressing your health conditions. You have told the panel how you would handle the situation differently in future [PRIVATE].

However, the panel was concerned that you appeared to lack insight into the potential impact of your actions on patients as well as the effect that the adulterated medication may have had on the children in your care. You state that codeine was rarely used on the ward but have failed to address that it was readily available to be prescribed if necessary. In the panel's view you have failed, in your reflection, to adequately address the impact this may have on a child in pain who may not be able to communicate this. Further, by diluting the medication, your colleagues would have been put at a disadvantage when treating patients on the Ward. The panel noted that you worked on the children's surgical ward and that there would therefore be a need for analgesic medication.

Nevertheless the panel accepted that your behaviour was intrinsically linked to your health, the panel heard your oral evidence in which you displayed remorse for your actions and the potential impact it had on patients. The panel therefore considered that you had demonstrated sufficient insight.

In its consideration of whether you have remedied your practice, the panel took into account the significant progress you have made in addressing your health conditions. The panel considered that remediation of dishonesty is particularly difficult especially in cases where the dishonest conduct is premeditated, there is an abuse of a position of trust and it is sustained over a long period of time. The panel considered that the behaviour which led to your conviction was a serious departure from that expected of a registered nurse.

However, the panel accepted that your behaviour was intrinsically linked with your health which was clearly the trigger and catalyst for the criminal activity.

The panel is of the view that there is a low risk of repetition based on Dr 1's prognosis and the panel's finding that you are not impaired by reason of your health. The panel therefore decided that a finding of impairment is not 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 therefore went on to consider whether the need to uphold proper professional standards and maintain public confidence in the profession would be undermined and the reputation of the profession brought into disrepute if a finding of impairment of fitness to practise were not made. The panel considered that if a member of the public were made aware of all the circumstances of this case, they would find your conduct deplorable and would expect a finding of impairment on public interest grounds. The panel considered your convictions to be serious, involving the theft of medication from your employers and the tampering of medication. This was not a one-off incident rather a premeditated course of conduct which continued for about 12 months and only ceased when you were caught. Further, your actions put multiple children on the Ward at risk of harm of a mis-dosage or additional and unnecessary pain.

The panel considered that a finding of current impairment was required in order to maintain public confidence in the profession, and in the NMC as a regulator and to uphold proper professional standards. The panel determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired by reason of your conviction.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor who referred the panel to the cases of *Bolton v Law Society (1994)* 1WLR and *Giele v GMC [2005]* 4 All ER 1242.

Submissions on sanction

Mr Smalley informed the panel that in the Notice of Hearing, dated 22 December 2020, the NMC had advised you that it would seek the imposition of a striking-off order if the panel found your fitness to practise currently impaired. Mr Smalley outlined what the aggravating and mitigating factors of this case were, in the NMC's view. He submitted that this was the appropriate sanction in this case.

The panel also bore in mind Mr Buxton's submissions. He invited the panel to take a pragmatic and sympathetic approach to sanction in view of all of the personal mitigation which has been presented to the panel. He reminded the panel of the public interest in retaining a skilled nurse on the register.

Mr Buxton submitted that yours is an unusual and exceptional case and invited the panel to adopt a course short of striking you from the register. He submitted that a fully informed bystander would consider a course short of a striking-off order to be appropriate in your case.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the 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:

- Your actions resulted in a criminal conviction.
- There was a breach of a position of trust.
- There was repeated dishonesty over a significant time period.
- You deliberately covered up your actions by refilling the medication bottles with distilled water thereby diluting the contents.
- By leaving adulterated medication on the Ward you knowingly placed patients at a risk of harm.
- A significant number of patients were put at a risk of harm (potentially over 100).
- The patients in this case were children from the ages of birth to 18.
- [PRIVATE].
- You took no steps to remedy your behaviour until you were caught.

The panel also took into account the following mitigating features:

- You have demonstrated insight.
- You have demonstrated remorse.
- There was significant personal mitigation relating to your health conditions.
- You have taken steps to address your health conditions.
- The considerable number of positive testimonials provided.

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, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that the behaviour which led to your criminal conviction was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel considered that this case does not involve your clinical skills, as such, there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered the SG in relation to a suspension order.

The panel noted that this was not a single instance of misconduct but a prolonged course of action over the period of a year. The panel recognised that your conduct was intrinsically linked with your health, however it considered that you made the choice to steal medication meant for children from your employer for your own use and you made the choice to cover this up by tampering with the medication. Over the course of a year you could have made other choices but you continued in your course of conduct until you were caught. [PRIVATE]. Furthermore the panel considered that by tampering with medication you put vulnerable children, who were unable to advocate for themselves, at a risk of harm. This could have led to them suffering unnecessary pain. Your actions also had the potential to cause medicine administration errors increasing the risk of harm.

Your conduct, as highlighted by the facts found proved and by your criminal conviction, was a significant departure from the standards expected of a registered nurse.

The panel considered that the serious breach of the fundamental tenets of the profession evidenced by your criminal conviction is fundamentally incompatible with you remaining on the register.

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with your remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel did take into consideration the mitigation put forward in terms of your health and the context which led to your offending. Whilst the panel is sympathetic it noted that personal mitigation carries less weight in regulatory proceedings. It noted from the SG that '*Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any*

individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.

The panel considered that the reputation of the nursing professions and the public's confidence to trust in nurses and in the NMC as regulator is paramount.

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 effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of 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.

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 in your own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Smalley. He submitted that an interim suspension order for a period of 18 months would be appropriate given the panel's decisions on impairment and sanction.

Mr Buxton did not make any submissions regarding an interim order.

Decision and reasons on interim order

The panel was satisfied that an interim 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.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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.

This will be confirmed to you in writing.

That concludes this determination.