

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

**Substantive Hearing  
Friday 7 October 2022  
and  
Friday 25 November 2022**

Virtual Hearing

**Name of registrant:** Ann Marie Shenton

**NMC PIN:** 04L0482E

**Part(s) of the register:** RNA, Registered Nurse – Adult  
February 2005

**Relevant Location:** Worcestershire

**Type of case:** Caution

**Panel members:** Patricia Richardson (Chair, Lay member)  
Esther Craddock (Registrant member)  
Pamela Johal (Lay member)

**Legal Assessor:** Penny Howe KC (7 October 2022)  
Justin Gau (25 November 2022)

**Hearings Coordinator:** Emma Bland (7 October 2022)  
Monsur Ali (25 November 2022)

**Nursing and Midwifery Council:** Represented by Tom Hoskins, Case Presenter

**Mrs Shenton:** Present and unrepresented

**Facts proved:** Charge 1

**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, on 20 July 2021, were cautioned for the following offence:

1. Theft by Employee – Between 1 June 2020 and 18 September 2020 at Redditch in the county of Worcestershire, stole Zopiclone sleeping tablets, of a value unknown belonging to Worcestershire NHS Trust.

And in light of the above, your fitness to practise is impaired by reason of your caution.

You admitted that you accepted the caution from the police.

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

During the hearing, Mr Hoskins, on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held in private on the basis that proper exploration of your case involves reference to the [PRIVATE] and other personal information. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference to the health circumstances [PRIVATE] and other personal information should be heard 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(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session in connection with the health circumstances [PRIVATE] and other personal information, as and when such issues are raised in order to protect your interests.

## **Decision and reasons on facts**

The charge concerns your caution and, having been provided with a copy of the simple adult caution record of administration dated 20 July 2021, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3).

The panel considered the information before it. The panel heard details of the background facts from Mr Hoskins and also heard evidence from you under affirmation.

## **Background**

The charges arose whilst you were employed as a registered nurse at the Alexandra Hospital (the Hospital), which is part of Worcestershire Acute Hospitals NHS Trust (the Trust).

The NMC received a referral from the Trust on 13 October 2021 regarding your conduct. The Hospital had identified an unusual and high amount of Zopiclone being ordered for the Ward that you worked on.

The Pharmacy ran a report for the period 1 July 2020 – 1 September 2020 and found that there were a high number of ad hoc requisitions for the Ward that you worked on. A number of the signatures on the ad hoc requisitions belonged to you.

The matter was referred to the police and you were interviewed. During the interview, you stated that you had taken the Zopiclone tablets for [PRIVATE]. You explained that having initially provided [PRIVATE] with Zopiclone tablets, which he found helpful, he demanded that you provide it to him on a regular basis. [PRIVATE]

You accepted a simple caution for theft issued by the police on 20 July 2021.

## **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 caution. 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**

Mr Hoskins 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).

Mr Hoskins provided a summary of the background to this case. Mr Hoskins further summarised the test of impairment contained in the case of *CHRE v NMC and Grant*. He noted that Paragraph 74 of the judgment invited the panel to consider the public interest and '*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 circumstances of your case.

Mr Hoskins submitted that the test in paragraph 76 required the panel to consider four different limbs. Firstly, whether you have in the past/or are liable in the future to put patients at an unwarranted risk of harm. He submitted that this limb was not relevant in the circumstances of your case, and there was no evidence of shortages or any tangible impact upon, or risk to, patients.

By contrast, Mr Hoskins submitted that the three remaining limbs of the test are engaged by the circumstances of your case. He submitted that your actions have in the past, brought the profession into disrepute and may do so in the future. He submitted

that you have also breached fundamental tenets of the nursing profession. Addressing the last limb relating to dishonesty, Mr Hoskins submitted that your repeated theft of medication across a period of time included an element of dishonesty. Moreover, the factual background also demonstrates an element of concealment as you only made admissions to the theft once the police became involved.

Mr Hoskins submitted that your actions in 2020 stemmed from your extreme personal circumstances at the time. He invited the panel to consider your liability to act in the same way in the future. He noted that the panel had no information about your practice and development since the incident.

Mr Hoskins noted that dishonesty is regarded as being difficult to remediate, but not necessarily impossible. He invited the panel to consider the context in which your actions took place, the fullness of your admissions and whether you can demonstrate sufficient insight so as to satisfy the panel that you will not repeat these actions in the future.

Mr Hoskins noted that your conduct breached fundamental aspects of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code), specifically, the standards contained in part 20.2, 20.4 and 20.8.

Mr Hoskins went on to explain the aggravating and mitigating features of your case. He noted that your dishonesty and theft was directly related to your nursing practice. You were able to access the drugs through your work, and in doing so, you abused the privileged position you occupy as a nurse. He also noted that your repeated theft of medication was serious, as you stole a controlled drug which is classified as a Class C drug. He submitted that the health of [PRIVATE] was undermined by your provision of un-prescribed medication. Mr Hoskins also submitted that your theft of medication was repeated over a prolonged period of time, and it was not a single act of desperation. He noted that you made admissions to stealing over a period of 4-5 weeks and 100 tablets, which is a significant period of time and quantity. He noted that you did not stop stealing medication until there was intervention from the police and you did not come forward of your own volition. Mr Hoskins submitted that there was no evidence to suggest that your

conduct would not have continued. He noted that you also signed requisitions for this specific drug. You also added Zopiclone tablets to requisitions already signed by other colleagues. In doing so, Mr Hoskins submitted that you attempted to conceal your acquisition of these tablets.

With regard to mitigating factors, he noted that you made early admissions when challenged by the police, the corroborating admissions which were also made by [PRIVATE], and the exceptional circumstances you were experiencing when these poor decisions were made.

Mr Hoskins concluded by submitting that if a finding of impairment was not made, proper professional standards would not be properly upheld and public confidence in the profession would be undermined.

You stated that your *“ability to work as nurse was seriously impaired at that time”* by your extreme personal circumstances. [PRIVATE] You fully accepted your actions and admitted to stealing the medication. You stated, *“there is no argument, what I did was dishonest and against all the rules of nursing”*. You stated that you *“won’t be returning to practice at any time”*. You said that the choices you made at that time *“destroyed [you]”* and you *“feel so ashamed to carry out the role, even though [you] love it, [you] could not face it”*.

You explained that your colleagues were aware of the pressures you were under [PRIVATE], and they were also aware that he turned up at the hospital when you were working. At the time, you thought that you would stop taking medication after your upcoming annual leave. [PRIVATE]

You explained that you had trained and qualified as a nurse in 2005 and had never acted in a dishonest way previously and never stole medication. You said that *“[your] job was [your] main focus”* and that *“patients and staff came first”*. You stated that you were previously held in high regard by nursing colleagues, and were a *“well-respected person, the go-to person who kept the ward going and upheld the rules”* and due to

extreme contextual pressures, found yourself in the position where you “*broke*” the rules. You expressed your deep remorse and sorrow for your actions.

[PRIVATE]

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

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the caution, 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 *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/their fitness to practise is impaired in the sense that S/He/They:*

- 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 deemed that your position as a senior nurse and your supply of medication to [PRIVATE] placed him in a position akin to that of a patient in your care. The panel noted that at this time, he was no longer under the supervision of his GP and therefore you owed him a duty of care as a patient. In the circumstances, the panel was of the view that the first limb of the *Grant* test was engaged. It concluded that your actions posed a risk of harm to [PRIVATE]. The panel also concluded that your conduct 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 a caution relating to dishonesty to be extremely serious.



The panel noted that there was a discrepancy between the number of Zopiclone tablets that was alleged to have been stolen by you, and the number you have admitted to stealing. The panel was unable to resolve that discrepancy, but was of the view that the quantity admitted by you, which exceeded 100 tablets, was an extremely large amount.

The panel considered that you were genuinely remorseful and sorry for your actions. The panel was of the view that you also possessed a degree of insight.

In its consideration of the issue of remediation, the panel was of the view that the nature of the behaviour that resulted in the caution was so serious, and such a breach of the fundamental tenets of the profession, that it was difficult but not impossible to remediate. However, despite that, you had provided little evidence of actions you had taken to demonstrate that a repetition of the behaviour would not occur in similar circumstances.

The panel is therefore of the view that there is a risk of repetition. 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 due to the seriousness of the conduct which was repeated over a period of time. It was of the view that public confidence in the profession would be undermined if a finding of current impairment was not made in these circumstances.

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

## **Sanction**

The panel considered this case very carefully and 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 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.

## **Submissions on sanction**

Mr Hoskins informed the panel that in the Notice of Hearing, dated 8 September 2022, the NMC had advised you that it would seek the imposition of a striking-off order if it found your fitness to practise currently impaired.

Mr Hoskins submitted that the NMC is seeking a striking-off order because your conduct fell so seriously below the standard expected of a registered nurse, that it is fundamentally incompatible with remaining on the NMC register. He said that at this stage the matter is left to the panel's experience and expertise.

Mr Hoskins submitted that the panel should impose an order that it deems most proportionate, having taken into account all the circumstances of the case, which protects the public and addresses the wider public interest.

Mr Hoskins reminded the panel of the aggravating and mitigating features that he had outlined previously. He reminded the panel again that you have an unblemished career of 17 years and that you worked your way through the profession to Band 7 which he submitted is a "*double-edged sword*" as it indicates you are a very able nurse and a high standard of practice is expected of such a person, including honesty and probity. He informed the panel that you have been co-operating and engaging with the NMC proceedings.

Mr Hoskins directed the panel to the SG in relation to dishonesty which cites the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin), where it was held that a nurse who acted dishonestly is always going to be at risk of losing her registration. However, the SG makes it clear that it is vital for the panel to start by considering sanction with the least impact on the nurse's practice and work upwards to the next most serious sanction if it needs to.

Mr Hoskins submitted that you did not receive any personal or financial gain from the breach of trust and that there were no other patients at direct risk of harm, other than [PRIVATE] and his role as, akin to patient. He submitted that the dishonesty was premeditated, systematic and longstanding, albeit, in a single episode, over a number of weeks.

Mr Hoskins submitted that, having taken all the circumstances of the case, this cannot be characterised as a one-off incident and therefore a striking-off order is the appropriate and proportionate sanction.

You stated that you have accepted full responsibility for your actions and acknowledge the seriousness of your behaviour. You also said that it was a one-off episode and that the situation was extremely difficult in your personal life. [PRIVATE].

You told the panel that you have been trying all your life to be a good person and to find yourself in this [PRIVATE] situation, was very hard and difficult. You also said that you did not abuse your position willingly. You told the panel that you do not plan to return to nursing because you feel embarrassed by your actions and that you are no longer working within the nursing profession as you are a carer for your [PRIVATE].

You further told the panel that you do not see the point in receiving a suspension order as you have no intention of returning to nursing. However, a striking-off order will be very hurtful and damaging for you.

## 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 amounted to a very serious abuse of position of trust
- Whilst there was no risk of harm to patients. Your supplying of controlled drugs to [PRIVATE], would have put him at risk of harm because he was not under the care of his GP in relation to his addiction and had been prescribed other medications at the time. You were supplying him with a controlled drug and not supervising the administration of it to ensure his safety
- Your actions were not one single act, there was a pattern of misconduct, albeit, stemmed from one incident
- You did not raise the concern with anybody until the intervention of the police
- There were opportunities to raise the issue but you failed to do so
- You were the Ward Manager, therefore you were an experienced nurse and should have been a role model to the staff
- You deliberately breached your professional duty of candour

The panel also took into account the following mitigating features:

- Your misconduct related to [PRIVATE] only and no one else
- You did not receive any personal or financial gain
- There was no risk of harm to other patients
- You found yourself in very difficult circumstances [PRIVATE]
- You have expressed immense remorse for your actions and developed insight into your misconduct

- You have a 17-year unblemished career

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 its findings on facts and impairment, and the public protection issues identified, 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 your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of its findings on facts and impairment. 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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charge in this case. The misconduct identified in this case was not something that can be addressed through retraining as dishonesty is difficult to address via the imposition of conditions. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel were of the view that the above guidance was relevant to many aspects of this case, however, your conduct was such a significant departure from the standards expected of a nurse that a suspension order would not be a sufficient, appropriate or proportionate sanction. The panel noted that the incidents were, in themselves, isolated given that they took place over a number of weeks in a 17-year career, but they formed a series which breached the fundamental tenet of the nursing profession.

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 a significant departure from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the NMC 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.

Having regard to your actions, the panel was of the view that you present a risk to the public should you continue practising at this time and, in addition, because of your misconduct, a more serious sanction is justified in this case in order to declare and uphold proper standards and maintain public trust and confidence in nurses, midwives and nursing associates.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This decision will be confirmed to you in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or is in your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Mr Hoskins. He submitted that an interim suspension order is necessary to cover the period until the striking-off order comes into effect having regard to the panel's findings. Mr Hoskins submitted that if you

appeal the decision of the panel, then you would be able to practice without restrictions until the appeal process is finished and this can take up to 18 months. He invited the panel to impose an order for a period of 18 months to cover the whole of the appeal period.

### **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.

That concludes this determination.