

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

**Substantive Meeting  
Thursday 24 November 2022**

Virtual Meeting

<b>Name of Registrant:</b>	<b>Susan Lynn Smallbones</b>
<b>NMC PIN</b>	79D1791E
<b>Part(s) of the register:</b>	RN1 Registered Nurse – Adult Nursing (8 October 1990)  RN 2 Registered Nurse - Adult (Level 2) Nursing (18 November 1981)
<b>Relevant Location:</b>	Luton and Hertfordshire
<b>Type of case:</b>	Caution
<b>Panel members:</b>	John Penhale (Chair, Lay member) Claire Rashid (Registrant member) Sue Davie (Lay member)
<b>Legal Assessor:</b>	Monica Daley
<b>Hearings Coordinator:</b>	Sharmilla Nanan
<b>Consensual Panel Determination:</b>	Accepted
<b>Facts proved:</b>	Charge 1
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Striking-off order</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Miss Smallbones' registered address by recorded delivery and by first class post on 18 October 2022.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Miss Smallbones' registered address on 19 October 2022. It was signed for against the printed name of 'Smallbones'.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation and that the meeting will take place on or after 21 November 2022.

In the light of all of the information available, the panel was satisfied that Miss Smallbones has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

That you, a registered nurse:

- 1) Received a police conditional caution on 2 January 2021 for:
  - a. Theft by employee – between 12/7/2019 and 12/07/2020 at Luton in the county of Bedfordshire stole ORAMPORPH, NAPROXEN& PROPRANOLOL, of a value unknown belonging to LUTON & DUSTABLE NHS TRUST contrary to Section 1(1) and 7 of the Theft Act 1968.

- b. Possession of a controlled drug of Class A – other – on 12/7/2020 at Hitchin in the county of Hertfordshire had in your possession a quantity of ORAMPORPH, NAPROXEN & PROPRANOLOL, a controlled drug of Class A in contravention of Section 5(1) of the Misuse of Drugs Act 1971 contrary to Section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971.

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

### **Consensual Panel Determination**

At the outset of this meeting, the panel was made aware that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the Nursing and Midwifery Council (NMC) and Miss Smallbones.

The agreement, which was put before the panel, sets out Miss Smallbones' full admissions to the facts alleged in the charges, and that her fitness to practise is currently impaired by reason of her caution. It is further stated in the agreement that an appropriate sanction in this case would be striking off order.

The panel has considered the provisional CPD agreement reached by the parties.

That provisional CPD agreement reads as follows:

#### ***“Fitness to Practise Committee***

#### ***Consensual panel determination (“CPD”): provisional agreement***

*The Nursing and Midwifery Council (“the NMC”) and Susan Lynn Smallbones (“Miss Smallbones”) PIN 79D1791E (“the Parties”) agree as follows:*

1. *Miss Smallbones is content for her case to be dealt with by way of a CPD meeting.*

***The charge***

2. *Miss Smallbones admits the following charges:*

*That you, a registered nurse:*

- 1) *Received a police conditional caution on 2 January 2021 for:*
  - a. *Theft by employee – between 12/7/2019 and 12/07/2020 at Luton in the county of Bedfordshire stole ORAMPORPH, NAPROXEN& PROPRANOLOL, of a value unknown belonging to LUTON & DUSTABLE NHS TRUST contrary to Section 1(1) and 7 of the Theft Act 1968.*
  - b. *Possession of a controlled drug of Class A – other – on 12/7/2020 at Hitchin in the county of Hertfordshire had in your possession a quantity of ORAMPORPH, NAPROXEN & PROPRANOLOL, a controlled drug of Class A in contravention of Section 5(1) of the Misuse of Drugs Act 197 contrary to Section 5(2) of and Schedule 4 to the Misuse of Drugs Act 1971.*

*AND in light of the above, your fitness to practise is impaired by reason of your caution*

3. *It should be noted that the caution charges record the drug as “Oramporph”. This is a misspelling of the drug named “Oramorph”. Oramorph is the drug which was found in Ms Smallbones’s home.*

## **The facts**

4. *Miss Smallbones appears on the register of nurses, midwives and nursing associates maintained by the NMC as a Registered Nurse and has been registered since 1979.*
5. *On 10 July 2020 the NMC received a referral from Hertfordshire Constabulary in relation to Miss Smallbones's fitness to practise.*
6. *At the time of the concerns raised, Miss Smallbones was employed by Bedfordshire Hospitals NHS Foundation Trust ("the Trust") working as a Registered Nurse at Luton and Dunstable Hospital ("the Hospital"). Miss Smallbones commenced employment at the Trust on 4 November 1996.*
7. *On 12 July 2020, Miss Smallbones was found on the floor at her home, by the ambulance service, in a lot of pain. They assisted Miss Smallbones in preparation to attend Lister Hospital to seek medical treatment. Miss Smallbones asked the paramedics to go and collect some things from upstairs in her home. They discovered drugs with no prescription labels on them. The ambulance service alerted the police.*
8. *On the same day, at approximately 12:00 hours, Hertfordshire Constabulary attended to the report.*
9. *Miss Smallbones was arrested at 14:51 hours on suspicion of possession with intent to supply. At this point, Miss Smallbones made no reply to caution. A section 18(1) PACE search was conducted at Miss Smallbones's home at 15:00 hours and the items were seized.*

10. *The police found 272 bottles of morphine oral solution, nine boxes of naproxen, which equates to 252 tablets, and 94 boxes of propranolol, which equates to 2632 tablets. These were all controlled drugs.*
11. *Miss Smallbones was de-arrested at 16:46 based on the fact that medical staff had said Miss Smallbones would be in hospital for at least two days and there was no longer the necessity to keep her in custody.*
12. *On 16 July 2020, Hertfordshire Constabulary received a call from one of the Senior Sisters in Critical Care Unit at Lister Hospital. They advised that Miss Smallbones had admitted to one of the nurses that she stolen the drugs from the Hospital.*
13. *Miss Smallbones was readmitted to hospital on 21 September 2020, having been discharged on 18 September 2020. She was readmitted [PRIVATE].*
14. *Miss Smallbones was interviewed under caution at her home address on 15 November 2020 in the presence of an appropriate adult. [PRIVATE]. She denied selling them.*
15. *[PRIVATE].*
16. *[PRIVATE]*
17. *On 2 January 2021, Hertfordshire Constabulary issued a caution for the following offences: the first offence, theft by employee contrary to the Theft Act 1968 and the second offence, possessing a controlled drug of Class A contrary to the Misuse of Drugs Act 1971. Both offences, concern the drugs, Oramorph, Naproxen and Propranolol.*

*Conditions were attached to the caution. The conditions were to write a letter of apology to the Chief Nurse at Luton & Dunstable NHS Trust and to*

*complete the E-Learning Drug Awareness Course directed by Druglink. Miss Smallbones complied with both conditions.*

*18. Miss Smallbones admitted to the charges and impairment in the case management form dated 22 June 2022.*

### ***Impairment***

*19. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction. Miss Smallbones's fitness to practise is currently impaired by reason of her caution.*

*20. At the relevant time, Miss Smallbones was subject to the provisions of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code"). On the basis of the charges being found proved, it is submitted, that the following parts of the Code are engaged in this case:*

#### ***20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

*20.4 keep to the laws of the country in which you are practicing*

*20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

*20.9 maintain the level of health you need to carry out your professional role*

21. *The Parties consider the following questions from the case of **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** can be answered in the affirmative both in respect of past conduct and future risk:*

- a) has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- b) has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- c) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- d) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future*

22. *The Parties have also considered the comments of **Cox J in Grant at paragraph 101:***

*“The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case”.*

23. *The Parties agree that limbs a), b) and c) as set out in Grant can be answered in the affirmative in this case.*

### **Public Protection**



*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*

24. *The Parties agree that no patients came to any harm as a result of Miss Smallbones actions. However, there are a number of risks concerning the conduct which is the subject of caution and these are:*

- *[PRIVATE]*
- *the quantities taken in this case were significant and were not stored securely creating a risk of others accessing it*

### **Public Interest**

*Has in the past brought and/or is liable in the future to bring the medical profession into disrepute*

25. *The theft and misuse of a large quantity of controlled drugs is clearly a serious matter which calls into question Miss Smallbones's integrity and professionalism. The theft occurred over a prolonged period of time, suggesting a calculated course of conduct.*

26. *Registered professionals occupy a position of trust in society. Miss Smallbones's actions have impaired patient confidence in the nursing profession. The public, quite rightly, expect nurses to provide safe and effective care, and conduct themselves in ways that promotes trust. This, the Parties agree, could result in patients, and members of the public, feeling deterred from seeking medical assistance when they should. Therefore, it is agreed that Miss Smallbones's conduct has brought the profession into disrepute and that she has breached the trust placed in her.*

*Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession*

27. *The Code divides its guidance for nurses into four categories which it can be considered are representative of the fundamental principles of nursing care. These are:*

- *Prioritise people;*
- *Practice effectively;*
- *Preserve safety and*
- *Promote professionalism and trust.*

28. *The Parties have set out above the relevant sections of the Code they agree have been breached in this case. As such the Parties agree that Miss Smallbones has breached fundamental tenets of practice.*

*Remediation, reflection, training, insight, remorse*

29. *NMC guidance adopts the approach of **Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)** by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

30. *The Parties have also considered the **NMC's Fitness to Practise guidance (Reference: FTP-13a)** in regards to whether to Miss Smallbones's conduct is easily remediable. The guidance states:*

*"Sometimes, the conduct of a particular nurse, midwife or nursing associate can fall so far short of the standards the public expect of professionals caring for them that public confidence in the nursing and midwifery professions*

*could be undermined. In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice."*

31. *As part of the conditions of the caution, Miss Smallbones wrote an apology to the Chief Nurse of the Trust and the NMC.*

32. *An extract from the letter addressed to the Chief Nurse states:*

*"I am very sorry for stealing the medication. [PRIVATE] I accept full responsibility for what I did. I realise I have betrayed your trust for what I did and have let myself down following 45 years in the NHS...[PRIVATE]"*

33. *Additionally Miss Smallbones wrote to the NMC on 11 April 2021. An extract of her letter states:*

*"I apologise for my behaviour and actions, it was a huge mistake... I was never a risk to my patients... and did practice safely. On reflection, I learnt what went wrong, [PRIVATE]"*

34. *Further, this case represents the first time Miss Smallbones has come to the attention of the NMC in the course of a nursing career of some 40 years. Miss Smallbones's clinical skills have not been called into question.*

35. *Miss Smallbones told the police in her interview under caution [PRIVATE].*

36. *[PRIVATE].*

***Public protection impairment and public interest impairment***

37. *The Parties agree that there remains a risk of repetition if Miss Smallbones was permitted to return to practice. Ms Smallbones accumulated a significant amount of controlled drugs over a lengthy period of time with a view to consuming it herself. [PRIVATE]. Such repetition would put patients at risk of unwarranted harm for the reasons set out above. As such, a finding of current impairment is therefore necessary on the grounds of public protection.*

38. *The Parties also agree that a finding of impairment is necessary on public interest grounds. The serious nature of the conduct leading to the caution and the breach of trust, both call into question Miss Smallbones's professionalism and trustworthiness. Both of these matters impact negatively on the profession's reputation, bringing it into disrepute. Consequently public confidence in the profession is undermined.*

39. *For the reasons above, The Parties agree that Miss Smallbones's fitness to practise is currently impaired, on both the grounds of public protection and the wider public interest.*

### **Sanction**

40. *In accordance with **Article 3(4) of the Nursing and Midwifery Order** the overarching objective of the NMC is the protection of the public.*

41. *Article 3(4A) of The Nursing and Midwifery Order 2001 states:-*

*"The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives-*

*(a) to protect, promote and maintain the health, safety and well-being of the public;*

*(b) to promote and maintain public confidence in the professions regulated under this Order; and*

*(c) to promote and maintain proper professional standards and conduct for members of those professions.”*

*42. Whilst sanction is a matter for the panel’s independent professional judgement, the Parties agree that the appropriate sanction in this case is a striking-off order.*

*43. The aggravating features in this case have been identified as follows:*

- *Large quantity stolen over the course of a year*
- *[PRIVATE]*
- *Breach of trust as Miss Smallbones stole from her employer*

*44. The mitigating features in this case have been identified as follows:*

- *No harm was caused to patients*
- *Miss Smallbones made admissions to the police, her employer and the NMC*
- *Miss Smallbones has expressed regret for her actions*
- *[PRIVATE]*
- *Completion of conditions of caution.*

*45. With regard to the NMC’s Sanctions Guidance the following has been considered. FTP-2 states as follows:*

*“If the criminal offending was directly linked to the nurse, midwife or nursing associate’s professional practice, it’s very likely this would be serious enough to affect their fitness to practise.”*

*46. In assessing seriousness the Guidance at SAN-2 addresses how seriousness is affected by dishonesty or cautions and states that “In cases involving dishonesty ... or cautions, It’s likely that we would need to take action to uphold public confidence in nurses, midwives or nursing associates, or to promote proper professional standards”. The Guidance goes on to say that conduct which is likely to question whether a nurse can remain on the register includes “premeditated, systematic or longstanding deception”.*

*47. Dealing with each sanction in turn starting with the least restrictive:*

*48. **Taking no action and a caution order** - it is submitted that taking no action and a caution order would not be appropriate in this case. The NMC sanctions guidance (SAN-3a) states that taking no action will be rare at the sanction stage and this would not be suitable where the nurse presents a continuing risk to patients. In this case, the seriousness of the concerns raised means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.*

*49. **Conditions of Practice Order** - The NMC’s sanctions guidance (SAN-3c) states that a conditions of practice order may be appropriate when “some or all of the following factors are apparent” and include:*

- *conditions can be created that can be monitored and assessed.*

*In this case it is unlikely that conditions would be appropriate. The offending conduct is serious, involving a breach of trust and so setting appropriate conditions which could be monitored and assessed is unlikely. Additionally it is not known whether Miss Smallbones is still [PRIVATE] likely to repeat the conduct.*

**50. Suspension Order** - *A suspension order is deemed to be unsuitable where the conduct is fundamentally incompatible with being on the Register. Consideration of seriousness and whether a period of suspension will satisfy the protection of the public or public confidence. The Guidance (SAN-3d) provides that a suspension order may be suitable where the Committee is satisfied that the nurse has insight and does not pose a significant risk of repeating the behaviour. [PRIVATE]. Additionally the public confidence is unlikely to be satisfied if a suspension order were made.*

**51. Striking-off Order** - *A striking-off order would be the most appropriate and proportionate sanction to impose in this case. The guidance on criminal convictions and cautions (FTP-2c) states:-*

*“If the criminal offending was directly linked to the nurse, midwife or nursing associate’s professional practice, it’s very likely this would be serious enough to affect their fitness to practise.”*

**52. The NMC guidance at SAN-3e states:**

*“The courts have supported decisions to strike off healthcare professionals where there has been lack of probity, honesty or trustworthiness, notwithstanding that in other regards there were no concerns around the professional’s clinical skills or any risk of harm to the public. Striking-off orders have been upheld on the basis that they have been justified for reasons of maintaining trust and confidence in the professions”.*

*53. Miss Smallbones's conduct and behaviours displayed are extremely serious and must be regarded as fundamentally incompatible with being a registered professional. Allowing continued registration would be seriously damaging to the reputation of the profession and would present an ongoing risk to public safety. In light of the aggravating features and in order to promote and maintain public confidence in professionals standards and conduct, a striking-off order is most appropriate."*

Here ends the provisional CPD agreement between the NMC and Miss Smallbones. The provisional CPD agreement was signed by Miss Smallbones on 11 November 2022 and by the NMC on 15 November 2022.

### **Decision and reasons on the CPD**

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. She referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Miss Smallbones. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Miss Smallbones admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Miss Smallbones admissions as set out in the signed provisional CPD agreement.



## **Decision and reasons on impairment**

The panel then went on to consider whether Miss Smallbones's fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Miss Smallbones, the panel has exercised its own independent judgement in reaching its decision on impairment.

In respect of Miss Smallbones's caution the panel acknowledged that she received a caution from the police on 2 January 2021 for two offences, theft by employee contrary to the Theft Act 1968 and possession of a controlled drug of Class A contrary to the Misuse of Drugs Act 1971. It noted the conditions attached to the caution to write a letter of apology to the Chief Nurse at Luton & Dunstable NHS Trust and to complete the ELearning Drug Awareness Course directed by Druglink, both which were completed by Miss Smallbones. In this respect, the panel endorsed paragraphs 17 to 18 of the provisional CPD agreement in respect of her caution.

The panel then considered whether Miss Smallbones' fitness to practise is currently impaired by reason of her caution. The panel determined that Miss Smallbones' fitness to practise is currently impaired on both public protection and public interest ground. [PRIVATE] In this respect the panel endorsed paragraphs 19 to 39 of the provisional CPD agreement.

## **Decision and reasons on sanction**

Having found Miss Smallbones' 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:

- Large quantity stolen over the course of a year;
- [PRIVATE]
- Breach of trust as Miss Smallbones stole from her employer.

The panel also took into account the following mitigating features:

- No harm was caused to patients;
- Miss Smallbones made admissions to the police, her employer and the NMC;
- Miss Smallbones has expressed regret for her actions;
- [PRIVATE]
- Completion of conditions of caution.

The panel considered the sanctions in ascending order. It also considered the seriousness of this case, in that large amounts of controlled medication had been stolen from Miss Smallbones' employer over a period of time. As such it was satisfied that this was a serious breach of trust on her part and that no sanction before a strike off was appropriate for both public protection and public interest grounds.

The panel accepted the CPD agreement at paragraphs 45 to paragraphs 53.

The panel determined that *“A striking-off order would be the most appropriate and proportionate sanction to impose in this case...”* and endorsed paragraph 53 which stated, *“Miss Smallbones’s conduct and behaviours displayed are extremely serious and must be regarded as fundamentally incompatible with being a registered professional. Allowing continued registration would be seriously damaging to the reputation of the profession and would present an ongoing risk to public safety. In light of the aggravating features and in order to promote and maintain public confidence in professionals standards and conduct, a striking-off order is most*

*appropriate.”*

This will be confirmed to you in writing.

### **Decision and reasons on interim order**

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 Miss Smallbones' own interest. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interests. 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 determined 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 and would be incompatible with its earlier findings. The panel therefore imposed an interim suspension order for a period of 18 months to cover any period of appeal.

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

That concludes this determination.