

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

**Substantive Meeting
17-19 January 2024**

Virtual Meeting

Name of Registrant: Daniel Barne

NMC PIN 18G0234W

Part(s) of the register: Registered Nurse – Sub part 1
Mental health nurse, level 1 (19 October 2018)

Relevant Location: Torfaen

Type of case: Caution

Panel members: Derek McFaull (Chair – Lay member)
Helen Eatherton (Registrant member)
Kathryn Smith (Registrant member)

Legal Assessor: William Hoskins

Hearings Coordinator: Vicky Green

Facts proved: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Striking-off order**

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

Decision and reasons on service of Notice of Meeting

The panel was informed that the Notice of Meeting had been sent to Mr Barne's registered email address by secure email on 11 December 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, that the meeting would take place on or after 15 January 2024 and that it would be held virtually.

In the light of all of the information available, the panel was satisfied that Mr Barne 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) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP supplied of a quantity of promethazine and lorazepam on 3 July 2022, a controlled drug of class C, in contravention of section 4(1) of the Misuse of Drugs Act 1971; and

2) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP stole promethazine belonging to Ystrad Mynach Hospital, contrary to section 1(1) and 7 of the Theft Act 1968.

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

Decision and reasons on amendment of the charge

At the outset of the meeting, having read the bundle and noting the specifics of the Conditional Caution, the panel decided to consider amending the charges to better reflect the Conditional Caution.

The panel accepted the advice of the legal assessor.

The charges as they currently read are as follows:

'That you, a registered nurse:

1) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP supplied of a quantity of promethazine and lorazepam on 3 July 2022, a controlled drug of class C, in contravention of section 4(1) of the Misuse of Drugs Act 1971; and

2) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP stole promethazine belonging to Ystrad Mynach Hospital, contrary to section 1(1) and 7 of the Theft Act 1968.

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

The amendment to the charge is as follows:

That you, a registered nurse, on 20 January 2023 received a police Conditional Caution in relation to the following:

1) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP supplied of a quantity of promethazine and lorazepam on 3 July 2022, a controlled drug of class C, in contravention of section 4(1) of the Misuse of Drugs Act 1971; and

2) On 3 July 2022 at Ysbyty Ystrad Fawr Hospital, Ystrad Fawr Way. Mental Health Unit – Ty Cyfannol, Ystrad Mynach, Caerphilly County Borough UK CF82 7GP stole promethazine belonging to Ystrad Mynach Hospital, contrary to section 1(1) and 7 of the Theft Act 1968.

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

The panel was of the view that there is no unfairness in making this amendment to the charge. It determined that this amendment properly reflects the facts of this case and does not materially change the nature of case.

Decision and reasons on facts

The charges relate to Mr Barne's Conditional Caution and, having been provided with a copy of the Conditional Caution which contained confirmation of the charges and Mr Barne's admission, the panel finds that the facts are found proved. In addition, the panel had regard to the Police Investigation Report, the Police interview and the written statement of the following witness on behalf of the NMC:

- Colleague A: A newly qualified adult mental health nurse employed by Aneurin Bevan University Health Board.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Barne's fitness to practise is currently impaired by

reason of his 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.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if as a result of the caution, Mr Barne's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 found all four limbs were engaged in this case.

Mr Barne was not qualified to give prescription medication to any patients and the panel determined that in giving prescription medication to Colleague A, he placed her at an unwarranted risk of harm. The panel was of the view that as Mr Barne did not know Colleague A's medical history, it was unsafe for him to give the medication to her. Furthermore, the panel determined that in giving Colleague A a drug which should be

prescribed, he placed her at a further risk of harm. The panel was also of the view that this casual attitude to medication carried an obvious risk to patients in future. Further, that in taking medication that was prescribed for patients, he placed patients at a risk of harm as it could have potentially led to a situation where this medication was not available for patients who needed it.

The panel determined that stealing medication and supplying it to another has brought the profession into disrepute. Furthermore, the panel found that Mr Barne receiving a police Conditional Caution for theft and supply of medication has brought the profession into disrepute and the existence of this caution is liable to bring the profession into disrepute in the future. The panel determined that Mr Barne's actions breached fundamental tenets of the profession, namely, prioritising people, practising effectively and safely and promoting professionalism and trust. The panel was of the view that by stealing medication and giving it to a colleague, Mr Barne disregarded his duties as a nurse and his position of trust. The panel considered that in supplying medication to a junior colleague, Mr Barnes encouraged a culture of dishonesty and poor practice which breached fundamental tenets of the profession.

The panel found that theft of medication and supplying it to a colleague was dishonest. He knew that the medication belonged to the hospital and he took it to give to his colleague without authorisation or justification.

The panel was mindful that dishonesty is attitudinal in nature and inherently difficult to remediate. It noted that Mr Barne made immediate admissions and accepted the Conditional Caution. Whilst the panel noted that Mr Barne had previously engaged with the NMC and provided some evidence of remorse, insight and some information about potential personal mitigation, he appears now to have disengaged and has not provided any recent information for the panel's consideration at this meeting. Based on the information before it, the panel found that Mr Barne's level of insight was limited, and it had no information about any steps he had taken to strengthen his practice or how he would act differently in the future.

The panel found that there is a risk of repetition of the conduct that led to the caution and a consequent risk of harm to colleagues, patients and the public. 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 was of the view that a member of the public would be shocked to hear that a nurse had received a Police Conditional Caution for the theft and supply of prescription medication. The panel was also of the view that a member of the public would be shocked to hear that a senior nurse took prescription medication from a hospital and gave this to a junior colleague. The panel therefore determined that a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Mr Barne's fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

The panel noted that in the Notice of Meeting the NMC had advised Mr Barne that the sanction bid would be a striking off order if the panel found that his fitness to practise is impaired.

Decision and reasons on sanction

Having found Mr Barne's 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:

- Mr Barne received a Police Conditional Caution for the theft and supply of prescription medication.
- His conduct abused his position of trust.
- Mr Barne supplied medication to a junior colleague and in so doing encouraged a culture of dishonesty and poor practice.
- In supplying medication, including prescription medication to a colleague he placed her at risk of harm and patients who were prescribed this medication at a risk of harm.
- Mr Barne's actions were dishonest and directly linked to his clinical practice.
- He has limited insight into the impact of his actions on Colleague A, patients and the profession.

The panel also took into account the following mitigating features:

- There is information about Mr Barne experiencing difficulties in his personal life at the time that the incident occurred.
- Mr Barne made early admissions to his managers and the Police.

Whilst the panel noted that there was no evidence of dishonesty and poor practice before or after the events in question, it did not consider this to be a mitigating feature in

itself. The panel determined that the dishonesty in this case was very serious and was not at the lower end of the spectrum of dishonesty.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the nature and seriousness of the case and the criminal caution. 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, and the public protection issues identified, an order that does not restrict Mr Barne's 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 dishonest behaviour that led to Mr Barne's Conditional Caution 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 Mr Barne's 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 seriousness and nature of the caution and Mr Barne's limited insight and lack of recent engagement. The dishonest behaviour that led to the caution was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Barne's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest in the circumstances of this case.

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;*

Whilst the caution arose from a single event, it comprises of two elements – the theft and supply of medication. The panel was of the view that dishonesty can be indicative of a deep-seated attitudinal problem, however, it had no further information to support this. The panel found that Mr Barne does not have full insight into his behaviour and, as previously determined, in the absence of any evidence that he has remediated the concerns, there is a real risk of repetition. The panel determined that Mr Barne significantly departed from the standards expected of a registered nurse. The panel determined that the behaviour that led to the caution was serious and breached the fundamental tenets of the profession. The panel determined that this behaviour is fundamentally incompatible with him 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?*

The panel was of the view that Mr Barne's theft and supply of medication and receiving a Conditional Caution was very serious. It determined that to allow him to continue

practising would not protect the public or patients and it would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Barne's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case. Furthermore, the panel determined that a strike off is the appropriate sanction, to satisfy the public interest. The panel considered that the public would not be satisfied that a nurse with a police caution for the theft and supply of drugs should be allowed to continue practising.

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 Mr Barne's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the written representations made by the NMC that:

'If a finding is made that Mr Barne's fitness to practise is impaired on a public protection and public interest basis and a restrictive sanction imposed, we

consider an 18 month interim suspension order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest. This is because any sanction imposed by the panel would not come into immediate effect but only after the expiry of 28 days beginning with the date on which the substantive decision letter is sent to Mr Barne or after any appeal is resolved. An interim order of 18 months is necessary to cover any possible 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 nature and 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 as to do otherwise it would be incompatible with its earlier findings.

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

That concludes this determination.

This will be confirmed to Mr Barne in writing.