

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
18-21 September 2017

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

Name of registrant:	Charlotte Wood
NMC PIN:	12H1666E
Part(s) of the register:	Registered Nurse – Sub part 1 RNA (March 2013)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Julia Thompson (Chair, Registrant member) Wendy Warren (Registrant member) Sylvia Dean (Lay member)
Legal Assessor:	Iain Burnett
Panel Secretary:	Jonathan Storey
Miss Wood:	Present and represented by David Claxton, Counsel, instructed by the Royal College of Nursing
Nursing and Midwifery Council:	Represented by Bo Kay Fung, Case Presenter, instructed by NMC Regulatory Legal Team
Facts proved by admission:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge (as amended):

That you:

1. Whilst employed as a Band 5 registered nurse at Royal Brompton and Harefield Hospital, between December 2014 and February 2015:

1.1 Took from the Trust supplies, one or more of the following medications for your own use, without authorisation:

- a. Zopiclone; **(PROVED BY ADMISSION)**
- b. Diazepam; **(PROVED BY ADMISSION)**
- c. Codeine. **(PROVED BY ADMISSION)**

1.2 Your actions in charge 1.1 above were dishonest in that you knew you were not authorised to take it. **(PROVED BY ADMISSION)**

2. Whilst employed as a band 5 Staff Nurse at Glenfield Hospital:

2.1 Between September 2015 and October 2016 took from the Trust supplies, an unknown quantity of one or more of the following medications for your own use –

- a. Lorazepam; **(PROVED BY ADMISSION)**
- b. Diazepam; **(PROVED BY ADMISSION)**
- c. Codeine. **(PROVED BY ADMISSION)**

2.2 On 13 August 2016 took from the Trust supplies, an unknown quantity of one or more of the following medications for your own use –

- a. Lorazepam; **(PROVED BY ADMISSION)**
- b. Diazepam; **(PROVED BY ADMISSION)**
- c. Codeine. **(PROVED BY ADMISSION)**

2.3 Your actions in charges 2.1 and/or 2.2 above were dishonest in that you knew you were not authorised to take it. **(PROVED BY ADMISSION)**

2.4 On 13 August 2016 consumed an unknown drug whilst on duty. **(PROVED BY ADMISSION)**

2.5 On 1 September 2016, you attended Leicester and Rutland Magistrates Court and pleaded guilty to Theft by Employee. **(PROVED BY ADMISSION)**

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Fung, on behalf of the NMC, to amend the wording of charge 2.5.

The proposed amendment was to remove the reference in that charge to a 'conviction'. You attended Leicester and Rutland Magistrates Court and pleaded guilty to Theft by Employee, and you received a conditional discharge for 24 months. It was submitted by Ms Fung that the proposed amendment would provide clarity and more accurately reflect the evidence and the law. The reason for this is s14(1) of the Powers of the Criminal Courts Act (Sentencing) 2000 states that a conditional discharge is deemed not to be a conviction.

Original charge

2.5 Received a conviction for Theft by Employee at Leicester and Rutland Magistrates Court on 1 September 2016.

Charge as amended

2.5 On 1 September 2016, you attended Leicester and Rutland Magistrates Court and pleaded guilty to Theft by Employee.

Mr Claxton, on your behalf, submitted that he had no objection to the proposed amendment.

The panel accepted the advice of the legal assessor that Rule 28 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules) states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a

fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

- (a) the charge set out in the notice of hearing; or
 - (b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.
- (2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application under Rule 19

At the outset of the hearing, Mr Claxton made a request that part of the hearing of your case be held in private on the basis that proper exploration of your case involves your health. The application was made pursuant to Rule 19 of the Rules.

Ms Fung indicated that she supported the application to the extent that any reference to your health 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.

Having heard that there will be reference to your health, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with your health as and when such issues are raised.

Background

You were referred to the NMC by Royal Brompton and Harefield NHS Foundation Trust (Harefield), where you were working as a band 5 nurse on the High Dependency Unit from June 2014 until February 2015.

After a routine drug audit for the period of October – December 2014 showed quantities of zopiclone, diazepam and codeine were missing, Harefield undertook a local investigation. You were questioned by the ward sister in February 2015, you admitted taking the drugs, and were dismissed from Harefield.

You were subsequently employed as a band 5 nurse at the Clinical Decisions Unit at Glenfield Hospital (Glenfield) from September 2015. In July 2016, the Medicines Management Assistant at Glenfield noticed that more codeine had to be ordered than was normal. The assistant advised the Matron, who decided to monitor the codeine stocks from 24 July 2016. The monitoring showed that more codeine was going from the Clinical Decisions Unit drug cupboard than was being dispensed to patients. Other medications, such as zopiclone and diazepam, were also monitored and cross-referenced with the nurse duty list.

The culprit for the thefts was narrowed down to a few nurses, including yourself. By 13 August 2016, only your name remained on the list for a day shift when medication went missing. Police were contacted, your locker was searched and medication was found in your glasses case. You were subsequently arrested and charged with theft.

On 1 September 2016, you attended Leicester Magistrates Court where you pleaded guilty to Theft by Employee. You subsequently received a two-year conditional discharge and were required to pay costs.

Decision on the findings on facts and reasons

Following the amendment to charge 2.5, you admitted all of the charges. These were therefore announced as proved by way of your admission.

Misconduct and impairment

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. 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.

You elected to provide oral evidence to the panel. [PRIVATE]

In her submissions, Ms Fung submitted that the NMC would need sufficient evidential basis about your current health before applying to incorporate an additional charge relating to health in this case. [PRIVATE]

Ms Fung invited the panel to take the view that your actions with respect to charge 1 amount to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008* (the 2008 Code). Ms Fung further invited the panel to take the view that your actions with respect to charge 2 amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) ((the 2015 Code), together with the 2008 Code, the Codes). She then directed the panel to specific paragraphs in the Codes and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Fung referred the panel to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a "word of general effect, involving some act or omission which falls short of what would be proper in the circumstances".

Ms Fung then moved on to the issue of impairment, and addressed the panel on the need 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. She referred the panel to the case

of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin).

Mr Claxton submitted that [PRIVATE] your fitness to practise is currently impaired by reason of your health, rather than solely by reason of misconduct. As a result of the newly formed Fitness to Practise Committees (as opposed to panels of the Conduct and Competence Committee and the Health Committee), Mr Claxton submitted that there was no formal avenue to transfer your case to a panel that would explore it solely through reference to your health.

In the circumstances, Mr Claxton invited the panel to direct the NMC to amend the current set of charges to include a separate charge outlining that your fitness to practice is impaired by reason of your health. He invited the panel to proceed in a manner consistent with Rules 14 and 15, which have now been removed. Mr Claxton submitted that such an approach would preserve flexibility and be fair to you.

Mr Claxton went on to submit that, if the panel was not convinced to treat this case as one of impairment as a result of health, that any misconduct found proved could be qualified. He submitted that there was no evidence of actual patient harm, the monetary value of the medications you stole were low, and that the conventional hallmarks of traditional cases of dishonesty do not apply in this case.

Moving on to impairment, Mr Claxton submitted that you believe you are not ready to return to work. Mr Claxton submitted that you are remorseful for your actions [PRIVATE]. As such, Mr Claxton submitted that there was little risk of repetition of the conduct found proved.

Decision

The panel accepted the advice of the legal assessor, which made reference to a number of judgments that are relevant, including: *Roylance* and *Grant*. The legal assessor also advised the panel that it should first consider if the charges found proved are a result of your misconduct, or your health.

With regard to misconduct, the panel would adopt a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Decision on head of impairment

The panel considered the submissions of Ms Fung and Mr Claxton in relation to this case, and accepted the advice of the legal assessor.

The panel considered that [PRIVATE] the charges, involving two prolonged episodes of dishonesty and theft from your employer, are extremely serious. The panel applied an approach consistent in manner with Rules 14 and 15 (which have been removed) as urged by Mr Claxton. The panel considered whether at this stage it would rule out the possibility of a striking-off order. The panel concluded that it would not rule out the possibility of imposing a striking-off order, should this case reach the sanction stage. However, the panel considered that it could take your health into account as a factor, should this case reach the sanction stage.

For these reasons, the panel determined that it would consider whether the charges found proved amount to misconduct and, if so, whether your fitness to practise is impaired as a result of such misconduct.

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Codes. The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to breaches of the Codes. Specifically:

2008 Code

- Provide a high standard of practice and care at all times
- Be open and honest, act with integrity and uphold the reputation of your profession

As a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions.

You must always act lawfully, whether those laws relate to your professional practice or personal life.

- 32** You must act without delay if you believe that you, a colleague or anyone else may be putting someone at risk.
- 33** You must inform someone in authority if you experience problems that prevent you working within this code or other national agreed standards.
- 49** You must adhere to the laws of the country in which you are practising.

- 51 You must inform any employers you work for if your fitness to practise is called into question.
- 57 You must not abuse your privileged position for your own ends.
- 61 You must uphold the reputation of the profession at all times.

2015 Code

- 13.4 take account of your own personal safety as well as the safety of people in your care
- 16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can
- 18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs
- 19 **Be aware of, and reduce as far as possible, any potential for harm associated with your practice**
- 19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm, and the effect of harm if it takes place
- 20 **Uphold the reputation of your profession at all times**
- 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...

20.4 keep to the laws of the country in which you are practising

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that all of the charges, individually and cumulatively, were extremely serious. The panel considered that the theft of medication from your employer [PRIVATE] would be regarded by other nurses and members of the public as deplorable. The panel [PRIVATE] was also concerned that your actions in charge 1 were repeated when placed in a new hospital environment and formed the basis for the charges as set out in charge 2.

[PRIVATE] You had been dismissed from Harefield and had time away from nursing. You secured employment at Glenfield and, during the currency of your referral to the NMC, repeated your dishonest behaviour and stole medication from Glenfield. The panel considered that, in these circumstances, such conduct is extremely serious.

For these reasons, the panel found that your actions did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct, 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 paragraphs 74 and 76 of the judgment of Mrs Justice Cox in the case of *Grant* in reaching its decision.

The panel found that, by stealing medications from your employer [PRIVATE], you placed patients at unwarranted risk of harm. The panel also considered that your misconduct brought the nursing profession into disrepute. Your dishonesty, as a result of stealing medications, also breached a fundamental tenet of the nursing profession.

Before determining whether you are currently impaired, the panel assessed your credibility when providing oral evidence. [PRIVATE] The panel considered that you were very remorseful with regard to the events in the charges, but, in the panel's view, your remorse was primarily directed at how your actions impacted upon you. The panel also considered that you were less than forthright [PRIVATE].

Regarding your insight, the panel considered that, although you made full admissions to the charges at the outset of the hearing and apologised to the panel generally for your actions, you were not able to demonstrate sufficient understanding of how your actions placed patients at risk of harm for an extended period of time. In addition, when questioned during the course of this hearing about how you would handle the situation differently, you were not able to provide sufficiently detailed answers. Although you expressed remorse for your behaviour, the panel considered that such remorse was

concerned with how this had impacted upon you personally, and not necessarily how it had impacted upon patients, colleagues and the public at large. In particular, the panel was concerned that you stated that you only grasped the magnitude of your behaviour at Glenfield (and previously at Harefield) when you were subsequently arrested by the police for Theft by Employee. You stated that it was the police involvement which was why you would act differently and not repeat your behaviour. The panel considered that this demonstrated your lack of proper understanding of your professional responsibilities and duties.

The panel noted that your dishonesty is hard to remediate, irrespective of the personal circumstances that you found yourself in at the time of the events.

[PRIVATE] The panel was concerned when you stated that, as there was no evidence of direct patient harm, there was also no risk to patients as a result of your behaviour.

The panel had sight of the witness statement of Ms 1, Matron at Glenfield, who stated:

[PRIVATE]

In its consideration of whether you have remedied your practice, the panel took into account that you have not worked as a registered nurse since August 2016, so have not had the opportunity to demonstrate safe unrestricted practice. The panel also noted that, although you are aware of general nursing issues via your membership of the Royal College of Nursing, you have not undertaken any professional development.

The panel considered that, when placed in stressful high-intensity clinical environments, this has resulted in you stealing medications from your employer. Although the panel has seen no evidence of repetition since the events of the charges, it considered that you have not been practising as a registered nurse since this time, and have not been subject to the stressors present in your previous roles. The panel had regard to the circumstances in which your dishonesty arose. It has taken into account that after you

secured employment at Glenfield, you repeated your behaviour when you found yourself in a stressful situation. You have not practised as a nurse since your time at Glenfield. In the circumstances, the panel concluded that there is a likelihood that you will repeat your misconduct. Also, in the absence of your full insight into your actions, the panel determined that there remains a risk of repetition, and 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 and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of that profession. The panel considered that, on the basis of the charges found proved, the wider public interest would be undermined if a finding of current impairment were not made. The panel therefore determined that, in this case, a finding of impairment on public interest grounds is also required.

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

Determination on 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 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 as well as the submissions of Ms Fung and Mr Claxton. The panel accepted the advice of the legal assessor. The panel bore 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 Sanctions Guidance (SG) published by the NMC, but recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Before making its decision on the appropriate sanction, the panel established the aggravating and mitigating features in this case.

The panel considered the aggravating features to be:

- your misconduct was extremely serious, and involved prolonged and repeated dishonesty, including whilst you were subject to a referral to the NMC;
- you breached the trust of your employers and abused your position as a registered nurse;
- a real potential for patient harm;
- a significant risk of repetition;
- no evidence of remediation;
- your remorse is currently self-centric;
- your limited insight; and
- public interest in this case.

The panel considered the mitigating features to be:

- you have engaged throughout this hearings process, including attended this hearing;
- [PRIVATE]
- you have demonstrated some general remorse and some evidence of developing insight;
- you made some early admissions and pleaded guilty to Theft by Employee at Leicester and Rutland Magistrates Court; and
- you referred yourself to the NMC in relation to the events of charge 2.

The panel reminded itself as to its decision in respect of misconduct and impairment.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which 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 the case. The panel further considered that your practice requires some form of restriction in order to suitably protect the public. The panel therefore 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 was mindful that any conditions imposed must be proportionate, measurable and workable. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case,

namely the theft of medications from your employers and inherent dishonesty, is not something that can be addressed through retraining. In addition, the panel considered your present circumstances, and that you are not currently able to comply with any conditions as they relate to your practise as a registered nurse. Further, 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, or uphold the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- a single instance of misconduct was identified but a lesser sanction is not sufficient;
- there is no evidence of harmful deep-seated personality or attitudinal problems;
- no evidence of repetition of behaviour since the incident; and
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.

The panel considered that your misconduct was over a prolonged period of time and involved a repetition of your behaviour at another hospital, which occurred after being dismissed by one employer and referred to the NMC. The panel further considered that your lack of insight into how your actions affected those around you indicated evidence of a deep-seated attitudinal problem [PRIVATE]. The aggravating factors that the panel took into account, in particular, included the potential risk of patient harm, as well as your lack of insight into the impact your failings may have, raising the issue of repetition.

The panel took into account the mitigation put forward on your behalf by Mr Claxton.
[PRIVATE]

However, in this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. [PRIVATE] There was no patient harm caused, but in the panel's view, that is a fortunate position and not as a result of your conduct. The panel views this conduct as extremely serious indeed.

The panel has not received any information to alleviate its concerns that you would not repeat your behaviour again if placed in a clinical environment with access to medications. The panel has also not received any references, concerning your nursing practice and/or current employment, or testimonials as to your character, in order to support your position.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register.

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

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors:

- A serious departure from the relevant professional standards.
- Doing harm to others or behaving in such a way that could foreseeably result in harm to others, particularly patients or other people the nurse or midwife comes into contact with in a professional capacity.
- Abuse of position.
- Dishonesty, especially where persistent or covered up.
- Persistent lack of insight into seriousness of actions or consequences.

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you 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 nursing 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.

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.

Determination on interim order

The panel considered the submissions made by Ms Fung that an interim suspension order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. Mr Claxton did not oppose the application.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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.