

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing
23 February 2018

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

Name of registrant: Karen Louise Holland

NMC PIN: 96D1311E

Part(s) of the register: Registered Nurse – Adult (sub part 1)
Specialist Community Public Health Nurses –
Health Visitor
Community Practitioner Nurse Prescriber

Area of Registered Address: England

Type of Case: Conviction

Panel Members: Jennifer Laing (Chair, Registrant member)
Sarah Fleming (Registrant member)
Paul Morris (Lay member)

Legal Assessor: Ben Stephenson

Panel Secretary: Kelly O'Brien

Registrant: Karen Louise Holland not present and not
represented

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

Facts proved: All

Fitness to practise: Impaired

Sanction: Strike Off

Interim Order: Suspension Order 18 Months

Details of charge

That you, a registered nurse,

1. Were convicted on 4 August 2017 at the Truro Crown Court of four counts of Indecent Assault on a female

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

Decision on service of notice of hearing

The panel was informed at the start of this hearing that Mrs Holland was not in attendance and that written notice of this hearing had been sent to Mrs Holland's registered address by recorded delivery and by first class post on 24 January 2018. Royal Mail Track and Trace documentation confirmed that notice of this hearing was delivered and signed for at Mrs Holland's registered address on 25 January 2018 at 10:32am in the printed name of "HAYWARD".

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Holland's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. The panel considered that the hearing notice stated the hearing address as 61 Aldwych, when the hearing was in fact taking place at 2 Stratford Place. The panel received confirmation that neither Mrs Holland nor any representation had arrived at the 61 Aldwych venue.

Mr Smalley submitted the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Holland had been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mrs Holland.

The panel had regard to Rule 21 (2) states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.

Mr Smalley invited the panel to continue in the absence of Mrs Holland, on the basis that Mrs Holland has not requested an adjournment and, as a consequence, has voluntarily absented herself. Mr Smalley submitted that Mrs Holland had previously engaged with the proceedings, and provided a statement, however cannot attend today's hearing as she is currently serving a prison sentence.

Mrs Smalley provided the panel with an email from Mrs Holland's daughter, in which she informed the NMC that Mrs Holland "is not able to be present for the hearing and that she had spoken to her case officer ... about this".

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "with the utmost care and caution" as referred to in the case of *R. v Jones (Anthony William), (No.2) [2002] UKHL 5*. The panel further noted the case of *R (on the application of Raheem) v Nursing and Midwifery Council [2010] EWHC 2549 (Admin)* and the ruling of Mr Justice Holman that:

"...reference by committees or tribunals such as this, or indeed judges, to exercising the discretion to proceed in the person's absence "with the utmost caution" is much more than mere lip service to a phrase used by Lord Bingham of Cornhill. If it is the law that in this sort of situation a committee or tribunal should exercise its discretion "with the utmost care and caution", it is extremely important that the committee or tribunal in question demonstrates by its language (even though, of course, it need not use those precise words) that it appreciates that the discretion which it is exercising is one that requires to be exercised with that degree of care and caution."

The panel noted the telephone correspondence from Mrs Holland in which she informed the NMC Case Officer that her prison does not allow internet access, nor will it allow her to use the telephone for specific periods of time. The panel noted the email correspondence in which Mrs Holland's daughter informed the NMC that Mrs Holland "is not able to be present for the hearing and that she had spoken to her case officer ... about this".

The panel decided to proceed in the absence of Mrs Holland. In reaching this decision, the panel considered the submissions of the case presenter, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *Jones*. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mrs Holland;
- Mrs Holland has engaged with NMC and informed the regulator that she will not be able to participate in today's hearing by reason of her serving a prison sentence;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- there is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Mrs Holland. The panel will draw no adverse inference from Mrs Holland absence in its findings of fact.

Background

Mrs Holland qualified as a registered nurse in April 1999. The charges arose whilst Mrs Holland was employed as a Health Visitor by Cornwall Partnerships NHS Foundation Trust (the Trust). On 27 February 2017 the NMC received a referral regarding Mrs Holland's fitness to practice from the Trust. The referral informed the NMC that Mrs Holland had been charged by the police with indecent assault on a female in 1997 before she qualified as a registered nurse.

In September 2016 the victim contacted the police and the investigation ensued. The case concerned a historical inappropriate sexual relationship between Mrs Holland and a 14 year old girl between 1996 and 1998. Mrs Holland was 31 at the time of the offence. Mrs Holland first met Person A through the Methodist church in Penzance.

The victim completed a visually recorded interview and described the nature of the sexual acts as involving digital penetration and oral sex. Mrs Holland was interviewed by the police and admitted to having a sexual relationship with the victim.

On 4 August 2017 at the Truro Crown Court Mrs Holland was convicted of four counts of indecent assault on a female. Mrs Holland was sentenced to 3 years and 6 months imprisonment, and required to sign the sex offender register under S92 SOA 2003 for life.

On 15 June 2017 Mrs Holland submitted a statement to the NMC for the purposes of the Interim Order hearing and this was made available to the panel.

Decision on the findings on facts and reasons

The panel accepted the advice of the legal assessor.

The charges concern Mrs Holland's conviction and, having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rules 31 (2) and (3) of the Rules which states:

- (2) Where a registrant has been convicted of a criminal offence—
 - (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is

evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

Submissions on impairment

Having announced its finding on the facts, the panel then moved on to consider whether Mrs Holland's fitness to practise is currently impaired by reason of her conviction. 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.

To assist the panel in its consideration of impairment, Mr Smalley provided the panel with a bundle of documents which included transcripts from the Crown Court case. Mr Smalley submitted that, whilst this was a historic offence and there were no issues concerning Mrs Holland's clinical practice, her actions have caused serious damage to the reputation of the profession. He submitted that impairment should be found on public interest grounds.

In his submissions, Mr Smalley referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* and addressed the panel on the need to uphold the reputation of the nursing profession. 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 accepted the advice of the legal assessor.

Decision on impairment

The panel considered if, as a result of this conviction, Mrs Holland'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. 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)* 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.”

Mrs Justice Cox went on to say in Paragraph 76:

“I would also add the following observations in this case...as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from *Shipman*, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor’s fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a. ...

- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. ...
- d. ...”

The panel considered that limb (b) was engaged in this case.

The panel noted that Mrs Holland made admissions to all charges prior to conviction, and pleaded guilty in the criminal court at the first opportunity. The panel further considered that Mrs Holland has demonstrated a full understanding of how her actions have impacted negatively on the reputation of the nursing profession.

The panel noted that this was not a case which concerned patient harm or Mrs Holland’s clinical nursing practice, and therefore determined that a finding of impairment is not necessary on the grounds of public protection. It had to consider whether a finding of current impairment was necessary on the grounds of public interest.

The panel noted the written statement Mrs Holland provided to the NMC in which she admitted the offences, prior to imposition of an interim order, and apologised for bringing the nursing profession into disrepute. She also expressed remorse for her actions. The panel considered the statement carefully, and noted that Mrs Holland had pleaded guilty at the first opportunity. The panel was of the view that Mrs Holland has demonstrated a considerable degree of insight.

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 and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was of the view that although the offences for which Mrs Holland was convicted are historic, their serious sexual nature resulting in a substantial prison sentence, and the requirement for her sign the sex offenders register for life, is so serious that it would greatly jeopardise public confidence in the profession.

In these circumstances, the panel determined that a finding of impairment was necessary on public interest grounds, in order to send a message about the standards of behaviour expected of registered nurses, and to uphold public confidence in the profession and its regulator.

Having regard to all of the above, the panel was satisfied that Mrs Holland's fitness to practise is currently impaired.

Submissions and determination on sanction

In his submissions on sanction, Mr Smalley invited the panel to impose a striking-off order. Mr Smalley outlined what the NMC considered to be the aggravating and mitigating features of this case, and submitted that, because of the seriousness of the facts underlying Mrs Holland's convictions, the only sanction that would suitably satisfy the public interest would be to permanently remove Mrs Holland's name from the register.

In reaching its decision, the panel had regard to all the evidence that has been adduced in this case. 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 (the SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Before making its determination on sanction, the panel had regard to the aggravating and mitigating features in this case.

The panel considered the aggravating features to be:

- Mrs Holland's actions involved serious sexual offences towards a child of 14 and an element of grooming.
- There was a significant disparity in age between Mrs Holland and the victim.

The panel considered the mitigating features to be:

- Mrs Holland pleaded guilty at the first opportunity;
- Mrs Holland's considerable insight and remorse regarding her actions;
- Mrs Holland's unblemished and successful career as a registered nurse.

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 Sanctions Guidance, 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 Mrs Holland's offences were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the serious sexual offences. 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 Mrs Holland's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. However, the panel considered that there are no clinical issues that arise in this case, and that Mrs Holland's actions were not something that can be addressed through retraining. Further,

the panel considered that the placing of conditions on Mrs Holland's nursing registration would not adequately address the seriousness of this case nor uphold the wider public interest. Therefore, the panel determined that a conditions of practice order would not be the appropriate or proportionate sanction.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates key considerations in relation to suspension:

- does the seriousness of the case require temporary removal from the register?
- will a period of suspension be sufficient to protect patients and the public interest?

This sanction may be appropriate where the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register.

Mrs Holland's conduct, as highlighted by the remarks of the sentencing Judge, was a significant departure from the standards expected of a registered nurse and the panel was not satisfied that a period of suspension would satisfy the public interest or uphold public confidence in the profession or the NMC.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

The panel therefore went on to consider the appropriateness of a striking-off order and took into account the following sections of the Sanctions Guidance:

- can public confidence in the professions and the NMC 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 the public interest?
- is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?

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 as set out in key standards, guidance and advice.
- 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. Harm is relevant to this question whether it was caused deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to patients. Harm may include physical, emotional and financial harm. The seriousness of the harm should always be considered.
- Any serious misconduct of a sexual nature...
- Convictions or cautions involving any of the conduct or behaviour in the above examples.

The panel determined that each of these four bullet points are engaged in this case. Mrs Holland's conviction is of a very serious nature. The panel noted that Mrs Holland's submission to the NMC stated "I have dishonoured the nursing profession and I am ashamed of my behaviour and it is with deepest regret that I cannot see myself practicing as a nurse again."

The panel considers that Mrs Holland's actions are fundamentally incompatible with her remaining on the register. The panel was of the view that to allow Mrs Holland to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel had regard to the mitigating factors, but were of the view that this was a case where the reputation of the profession and the public interest outweighed Mrs Holland's own individual interests.

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. It concluded that, given the seriousness of the criminal offence, nothing short of this would be sufficient to uphold public confidence and the reputation of the profession. It would also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Accordingly, the panel decided to make a striking-off order.

Determination on interim order

The panel considered the submissions made by Mr Smalley that an interim order should be made on the grounds that it is necessary and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was mindful that there were no public protection concerns in this case and that the threshold for imposing an interim order on public interest grounds alone was high. However, the panel had regard to the seriousness of the conviction and for the reasons set out in its decision for the substantive order it was satisfied that, in this case, it was in the public interest to impose an interim suspension order on these grounds alone. 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 order will be replaced by the striking-off order 28 days after Mrs Holland is sent the decision of this hearing in writing.

That concludes this determination.