

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

**Substantive Meeting**

19-20 September 2018

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

**Name of registrant:** Alison Brigitte Randall

**NMC PIN:** 79K0539E

**Part(s) of the register:** Nursing-Sub part 1  
Nursing-Sub part 2

**Area of Registered Address:** England

**Type of Case:** Misconduct

**Panel Members:** Dr Nicola Jackson (Chair, Lay Member)  
Robert Barnwell (Lay Member)  
Pamela Campbell (Registrant Member)

**Legal Assessor:** Jane Rowley

**Registrant:** Alison Brigitte Randall not present and not represented.

**Facts proved by admission:** All by admission

**Fitness to practise:** Impaired

**Sanction:** Striking-off Order

**Interim Order:** Interim Suspension Order -18 months

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this meeting that Ms Randall was not in attendance and that written notice of this meeting had been sent to her registered address by recorded delivery and by first class post on 26 June 2018. Notice of this meeting was delivered to her registered address on 28 June 2018.

The panel took into account that the notice letter provided details of the allegation, and that a meeting date would be on or after 31 July 2018.

The panel accepted the advice of the legal assessor who referred them to the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”).

In the light of all of the information available, the panel was satisfied that Ms Randall has 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.

### **Background:**

Ms Randall was working as a registered nurse in Williton community hospital during 2017. The hospital pharmacy department recorded over-prescribing of Zopiclone and stock levels of the drug were monitored within the Utility Store. A police investigation commenced which included installing a covert camera within the Utility Store and viewing of images captured by the camera.

On 22 June 2017 Ms Randall was identified unlocking the door to the drugs cabinet and removing a box and taking something from it before placing it back in the drawer. She is then seen to place an item inside the top of her uniform under clothing.

On 23 June 2017 she was again seen entering the Utility Store and to remove 2 items from a box of tablets, one of which was placed in her mouth whilst the other may have been placed in the right pocket of her tunic. She then returned the box to the drawer and closed the cupboard before locking it.

On being shown the images she admitted to all the thefts of Zopiclone, including patient's own medication but was unable to remember exact dates. It was identified that Ms Randall had stolen tablets between 3 February 2017 and 23 June 2017 on 19 occasions.

When interviewed she confirmed that the tablets were not hers to take and that she had taken them to control her anxiety and depression. On 3 August 2017 she pleaded guilty to the thefts and received a Conditional Discharge for a period of 2 years.

## **Details of charges:**

That you, a registered nurse:

1. Whilst working at Williton Community Hospital between 3 February 2017 and 21 June 2017, you stole 419 tablets of Zopiclone from the Clean Utility Store and the Patient's Own Store
2. Whilst working at Williton Community Hospital, on 22 June 2017 you stole 14 tablets of Zopiclone from the Clean Utility Store
3. Whilst working at Williton Community Hospital, on 23 June 2017 you stole 2 tablets of Zopiclone from the Clean Utility Store
4. 4. Failed to co-operate with the NMC's investigation in that you did not return medical consent and testing forms as requested to do so in the letters sent to you on the dates listed in Schedule 1

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

### **SCHEDULE 1**

24 July 2017

3 October 2017

25 October 2017

17 November 2017

**Decision on the findings on facts and reasons:**

Although Ms Randall admitted her guilt in the Magistrates Court and received a Conditional Discharge, the panel accepted the advice of the legal assessor, that this does not constitute a conviction unless subsequently breached by virtue of Section 14 (1) and 13 of the Powers of Criminal Courts (Sentencing) Act 2000.

The panel took into account the admissions to the charges in Ms Randall's signed case management form dated 19 May 2018.

The panel therefore found the facts proved by admission.

**Decision on misconduct:**

Having announced its findings on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Ms Randall's fitness to practise is currently impaired.

The panel accepted the advice of the legal assessor who referred them 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.' She also advised them to consider Ms Randall's conduct in the context of the NMC Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code).

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.

The panel took into account Ms Randall's admission in her signed case management form that her fitness to practise is impaired by reason of her misconduct.

The panel adopted 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, Ms Randall's fitness to practise is currently impaired as a result of that misconduct.

In reaching its decision, the panel 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.

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of the Code. The panel was of the view that Ms Randall's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

- 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 law of the country in which you are practising

The panel took into account her admission that her actions amount to misconduct. It was of the view that the thefts whilst at work and in breach of trust on a number of occasions, over a prolonged period of time, from different locations, fell significantly short of the conduct and standards expected of a nurse and, furthermore, amounted to serious misconduct.

The panel next went on to decide if as a result of this misconduct Ms Randall'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 and to maintain professional boundaries. 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 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 having heard submissions, principally from Ms McDonald, 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. 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 finds that all the limbs, (a) (b) (c) and (d) are engaged in this case. Ms Randall has admitted misconduct and that her fitness to practise is impaired. The panel took note of the guilty pleas to the thefts in the Magistrates Court and considered that the facts that gave rise to them were sufficiently serious to impair her fitness to practise.

Regarding insight, the panel considered that she has shown some insight and remorse and is regretful of the position she had placed everyone in. In her written submissions, Ms Randall has stated that she no longer works as a registered nurse and has not renewed her registration. In addition she has requested that her name be removed from the register.

In its consideration of whether she has remedied her practice, the panel took into account her admissions that she stole tablets belonging to a patient because she was

an addict, needed help and that she was now in recovery. However she failed to provide or place any evidence before the panel to demonstrate that she has sufficiently remediated her behaviour. In her evidence she refers to potential treatment, however there is no evidence that she has taken any steps to engage in such treatment.

The panel had at the forefront of its mind patient safety and that Ms Randall's misconduct involved serious dishonesty on numerous occasions over a significant period. Such behaviour meant that it was difficult to put a time limit on remediation and there was an absence of any steps taken by her to confront and deal with her addiction and wrongdoing. As such it is the view of the panel that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding proper professional standards.

Accordingly, the panel was satisfied that Ms Randall's fitness to practise is currently impaired on both public protection and public interest grounds.

### **Determination on sanction:**

Having found Ms Randall's fitness to practise currently impaired, the panel went on to determine what sanction, if any, is necessary. The panel took account of all the material before it and its findings hitherto.

It accepted the advice of the legal assessor, who referred them to the NMC Sanctions Guidance to Panels under the heading serious cases and cases involving dishonesty. She also reminded them of the case of *Parkinson v NMC* [2010] EWCA 1898 (Admin) which should also be considered at sanction stage in a case involving dishonesty.

The panel had regard to the principle of proportionality, weighing the interests of Ms Randall against the public interest. The panel bore in mind that the purpose of a sanction is not to be punitive although it may have that effect, and that the main purpose of a sanction is to protect patients and the wider public interest. The wider public interest includes maintaining confidence in the profession and the NMC and declaring and upholding proper standards of conduct and behaviour.

The panel had careful regard to the Sanctions Guidance published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel found the following aggravating factors:

- The misconduct was prosecuted in the criminal courts
- Misuse of power
- Vulnerable victims
- Personal gain from breach of trust
- Direct risk to patients by removing their supply of medication
- Direct risk to patients by taking sedative medication whilst on duty

- Premeditated, systematic and longstanding deception on 19 occasions between 3 February 2017 and 23 June 2017

The panel considered the mitigating factors in this case to be as follows:

- Previous good character and 38 years of service as a registered nurse
- Full and early admissions in the criminal court and to the NMC
- Some, limited, engagement with the NMC investigation
- Remorse and some insight
- Ongoing health issues.

The panel first considered taking no action but concluded that given the seriousness of the misconduct this would be wholly inappropriate and would not satisfy the public interest as there is a continuing risk to patients, and Ms Randall's failures bring the profession into disrepute, as she has breached one of the fundamental tenets of the profession.

The panel then considered whether to make a Caution Order but found that the behaviour was not at the lower end of the spectrum of impaired fitness to practice. Therefore a Caution Order would be inappropriate in view of the seriousness of the case and because it would not protect the wider public interest.

The panel next considered whether placing conditions of practice on her registration would be a proportionate and appropriate response. The criminal conduct that led to Ms Randall's guilty pleas in the Magistrates Court did not primarily relate to clinical practice and consequently there are no identifiable areas of her practice that require assessment or re-training. It therefore would not be possible to formulate conditions sufficient to protect patients from serious risk of harm. The panel concluded that a conditions of practice order would not be workable, appropriate or sufficient to address the wider public interest or patient safety.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel reminded itself that her conduct demonstrated a serious departure from the standards expected of a registered nurse, whilst acknowledging some mitigating factors in her case. The panel also bore in mind the following specific considerations set out in the Sanctions Guidance in relation to suspension orders and what is required.

- A single instance of misconduct but where a lesser sanction is not sufficient
- No evidence of harmful, deep-seated personality or attitudinal problems
- The panel is satisfied that the nurse has insight and does not pose a significant risk of repeating behavior

The panel did not consider that those limbs could be satisfied in relation to the appropriateness of making a suspension order.

On the particular facts of this case, the panel considered that Ms Randall's criminal misconduct for dishonesty was so serious as to be fundamentally incompatible with continuing to be a Registered Nurse and drew guidance from the Sanctions Guidance of the NMC in respect of cases with particular risks to public confidence namely Dishonesty.

"Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain
- no risk to patients
- incidents in private life of nurse or midwife

The panel considered that these limbs do not apply to this case.

The law about healthcare regulation makes it clear that a nurse or midwife who has acted dishonestly will always be at risk being removed from the register.

Nurses and midwives who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again... Cases involving criminal offending by nurses or midwives are a good illustration of the principle that the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of its price.”

The panel took into account that there is no evidence from Ms Randall in the form of a reflective piece or other information as to the steps she has taken to remediate her misconduct and/or seek help in relation to her addiction, poor physical and/or mental health.

The panel determined that the case did not involve a single incident of misconduct, was not spontaneous or opportunistic, there was an ongoing risk to patients, and that the dishonesty related to an abuse of Ms Randall’s power and responsibilities as a registered nurse. Therefore the making of a suspension order in this case could not be justified. It took into account that her misconduct constituted a significant departure from the standards to be expected from a registered nurse. In coming to its decision the panel also took into account Ms Randall’s express wish to be removed from the register.

Consequently the panel was of the view that a striking-off order is appropriate as the behaviour is fundamentally incompatible with being a registered nurse as it involved:

- A serious departure from the relevant professional standards as set out in key standards, guidance and advice
- Deliberate harm to patients and behaving in a way that could foreseeably result in harm to others
- Abuse of position of trust and violation of the rights of patients

- It is a case involving criminal conduct, namely persistent dishonesty, over a prolonged period of time on a number of occasions

The panel also went on to consider the following key considerations identified in the sanction guidance under the heading Striking-off Order:

- Public confidence in the professions and the NMC could not be maintained if Ms Randall is not removed from the register as she has breached one of the fundamental tenets of the profession
- Striking-off is the only sanction which will be sufficient to protect the public interest
- The seriousness of the case is incompatible with ongoing registration

Only the sanction of Striking-off would properly mark the importance of maintaining public confidence in the profession, and send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

The panel therefore decided to make a Striking-off Order.

## **Determination on Interim Order**

Having determined to impose a striking off order, the panel next considered if an interim order is necessary to protect the public, is otherwise in the public interest or is in Ms Randall's own interest.

In accordance with Article 31 of the Order the panel may, where determined necessary, make an interim conditions of practice order or an interim suspension order for a period of no more than 18 months.

The panel accepted the advice of the legal assessor.

For the reasons it has provided thus far the panel was satisfied that an interim suspension order is both in the public interest and necessary to protect the public. The panel had regard to the seriousness of the facts 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 lodged and then determined by the appropriate Court.

If no appeal is made, then the interim order will be replaced by a striking off order 28 days after being sent the decision of this meeting in writing.

This concludes this determination.