

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

**Substantive Meeting
22 February 2022**

Virtual Hearing

Name of registrant: Emma Pope

NMC PIN: 11H2243E

Part(s) of the register: RM: Midwife (6 September 2022)

Area of registered address: Cardiff

Type of case: Police Caution

Panel members: Darren Shenton (Chair, Lay member)
Pauline Esson (Registrant member)
Claire Cheetham (Lay member)

Legal Assessor: Angela Hughes

Hearings Coordinator: Max Buadi

Facts proved: Charge 1

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 provided with the Notice of Meeting letter that had been sent to Miss Pope's registered email address on 18 January 2022.

The panel took into account that the Notice of Meeting provided details of the allegation, as well as the date from when the meeting could take place.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Pope has been served with the Notice of Hearing in accordance with the requirements of Rules 11A and 34.

Details of charge

That you, a registered nurse:

1. On 27 July 2019, received a caution for an offence of theft by employee, in that you stole a quantity of dihydrocodeine and oral morphine solution of a value unknown belonging to NHS England 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.

Background

Miss Pope was first entered onto the NMC's register in 2012. She started working at the Gloucestershire Hospitals NHS Foundation Trust (the Trust) in 2016.

At the relevant time, Miss Pope was working as a midwife at Stroud Midwifery Unit, ('Stroud') which is a stand-alone midwife led unit. Stroud has six post-natal beds and two delivery rooms. Women who have given birth in the Consultant Unit and may have had difficult births, such as caesarean sections and instrumental deliveries also occupy the postnatal beds.

On 7 January 2018, Midwife Ms 1, who was responsible for ordering medication at Stroud, placed an order for one box of Dihydrocodeine (containing 28 tablets).

The following night Miss Pope informed Ms 1, who was on the night shift, that she had ordered two boxes of Dihydrocodeine tablets and a 100ml bottle of Oramorph solution as she had noticed that the stock levels were low.

Ms 1 decided to perform a stocktake of medications during the night shift and noted that 20 tablets of Dihydrocodeine and 30ml of Oramorph solution were unaccounted for.

There were two postnatal women at Stroud at the time, one woman had received two tablets of Dihydrocodeine during the day; however, this did not account for the 20 missing tablets or the decrease in the Oramorph solution. Ms 1 also found an empty syringe in a bin in the midwives' office.

Ms 1 raised her concerns with the manager, who escalated the matter further. The following night Miss Pope told Ms 1 that she had given three Dihydrocodeine tablets to a patient who had been discharged to go home without prescribed 'tablets to take out' (TTO's). This was against the Trust's policy as both Dihydrocodeine and Oramorph need to be prescribed by a doctor.

Miss Pope admitted that giving the patient this medication without a prescription was an error and said that she reflected on this at the time.

Due to the concerns that Miss Pope might have taken some Dihydrocodeine and Oramorph, Counter fraud and the police investigated the matter. On 27 July 2019, during her police interview under caution, and in the presence of her legal representative, Miss Pope admitted to the police that she had stolen a quantity of Dihydrocodeine tablets and oral morphine solution. She accepted a simple police caution on the same date as means of disposal of the case.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from Miss Pope.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Ms 1: Registered Midwife at the Unit at the concerning time;
- Mr 2: Police Acting Inspector at Gloucestershire Constabulary who investigated the concerns.

The panel also had regard to written representations from Miss Pope.

The panel then considered the charge and made the following findings.

Charge 1

1. On 27 July 2019, received a caution for an offence of theft by employee, in that you stole a quantity of dihydrocodeine and oral morphine solution of a value unknown belonging to NHS England contrary to section 1(1) and 7 of the Theft Act 1968.

This charge is found proved.

The panel had a copy of the police caution which showed that on 27 July 2019, Miss Pope accepted a simple police caution for the offence of theft by employee from Gloucestershire Constabulary. On the balance of probabilities and in the absence of any information from Miss Pope to the contrary, the panel find this charge proved by virtue of the police caution documentation.

Fitness to Practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether Miss Pope's fitness to practise is currently impaired as a result of the 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

Representations on impairment

The NMC directed the panel to specific paragraphs within 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) and identified where, in the NMC's view, Miss Pope's actions fell seriously below the standard expected of a registered midwife.

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) *Zgymunt v General Medical Council* [2008] EWHC 2643 (Admin) and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

The NMC invited the panel to find Miss Pope's fitness to practise impaired on the grounds that Miss Pope has said that she took the medications so that she could physically manage her tasks during the working day. Registrants not being physically fit enough to work and/or taking medication, which is not prescribed to them, during the working day can place patients at a risk of harm because the midwife's ability to practise safely may be compromised.

The NMC submitted that theft of medication from the NHS by a midwife is likely to be considered by the public to be serious and damage the reputation of the midwifery profession. Dishonesty itself is also a breach of a fundamental tenet of the profession. Current impairment can be found either on the basis that there is a continuing risk to the public or that the public confidence in the nursing and midwifery professions and the NMC as the regulator would be undermined if such a finding were not made.

With regard to future risk, the NMC submitted that Miss Pope provided conflicting responses to the allegations of theft. Whilst first making admissions to the police, she later denied taking the Oramorph solution in her submissions to the NMC. Further, there has been little or no acceptance of personal responsibility, little insight into the seriousness leading to the police caution and no evidence of remediation. The NMC submitted that a finding of impairment is required in the public interest because the risk of repetition remains high, and the actions are so serious that a finding of impairment is required to uphold standards and maintain confidence in the profession.

The panel accepted the advice of the legal assessor.

Midwives 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 midwives with their lives and the lives of their loved ones. To justify that trust, midwives 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 paragraph 76 of the judgement in *Grant*, 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 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 limbs are engaged in this case.

The panel concluded that Miss Pope has in the past acted so as to put patients at unwarranted risk of harm. It was of the view that her self-medicating on prescription drugs whilst on duty without any external management would have potentially placed her in a compromising position as far as being able to deliver safe and effective patient care. The panel determined that the theft of medication was a breach of one of the fundamental tenets of midwifery practice and is liable to bring the nursing profession into disrepute. In

the panel's judgement, the public would not expect a midwife to act as Miss Pope. They would expect midwives to be honest and act with integrity at all times, adhere to the appropriate professional standards and to act to safeguard the health and wellbeing of patients.

The panel finds that the following parts of the Code are engaged:

4 Act in the best interests of people at all times

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.2 keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times

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

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

The panel recognised that it had to make a current assessment of Miss Pope's fitness to practise, which involved not only taking account the theft of medication which resulted in a

police caution but also what has happened since the theft came to light. It had regard to the case of *Cohen* and therefore considered whether the concerns identified were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the theft and considered whether you had provided evidence of insight and remorse.

The panel took account of the transcript of the police interview conducted on 27 July 2021. Miss Pope stated:

“I want to admit to taking the Dihydrocodeine and the Oramorph because, the main reason was because when I was in work we were bent over in the birth -- birthing pools and different things like that and I have horrendous back pain so I take them so as I could stay in work and let anyone down. That's all I want to say.”

However, the panel also took account of an email Miss Pope had sent to the NMC dated 29 June 2021 where it appears to the panel that she has retracted her previous statement made to the police. The email stated:

“I notice that you are asking me to admit to taking 70 dihydracodeine and 30ml oramorph - in the final interview with the police I was convinced my my public defender to admit to the 30ml oramorph which I did not take...[sic]”

The panel noted that these responses are conflicting regarding what Miss Pope is admitting to. She also stated in the email that *“My career within the NHS is over not only because of the decision I made but also because of the amount of time it's taken to sort out (over 3 years).”* It was of the view that Miss Pope demonstrated little or no acceptance of personal responsibility. Further, it appears she has not demonstrated any insight into the impact her actions may have had on her colleagues, the wider public interest and the reputation of the midwifery profession. In addition, it appears that she has not demonstrated understanding of how her actions may have impacted upon her own ability to practise safely as a midwife.

The panel took account of the testimonials provided by Miss Pope. It noted that these testimonials attest to Miss Pope's honesty and integrity. However, it reminded itself that she was cautioned on 27 July 2019. While some of the testimonials are undated, the ones that do have a date all precede her acceptance of the police caution.

In light of this, the panel place very limited weight on the content of the testimonials as there is no indication that the authors are aware of the circumstances of the police caution.

The panel reminded itself that dishonesty is often said to not be easily remediable. However, in the panel's judgment, evidence of insight, remorse and reflection together with evidence of subsequent and previous integrity are all highly relevant to any consideration of the risk of repetition, as is the nature and duration of the dishonesty itself.

The panel had no evidence before it to allay its concerns that Miss Pope currently poses a risk to patient safety. It considered that her actions occurred in the workplace and she stole medication for her own use that had been ordered for the purpose of patient treatment. As a result, patients are potentially deprived of medication intended for them.

Additionally, the panel had no evidence of remediation addressing any of the identified areas of concern, there is no evidence of remorse and Miss Pope has demonstrated no insight into her actions in respect of this allegation. In the absence of this, the panel considered there to be a real risk of repetition.

The panel bore in mind that the overarching objectives of the NMC; 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. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

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.'

Given the nature and extent of the charge found proved including the dishonesty, "the need to uphold proper professional standards and public confidence in the profession would be undermined" if a finding of current impairment were not made. It determined that Miss Pope was employed in a position of trust and her actions were a breach of this trust. It bore in mind that the dishonest act was self-serving and continued over an extended period of time. It was of the view that a fully informed member of the public would be seriously concerned should Miss Pope be permitted to practise as a registered midwife in future without some form of restriction.

For all the above reasons the panel concluded that Miss Pope's fitness to practise is currently impaired by reason of the police caution 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 Miss Pope's name from the Register. The effect of this order is that the NMC register will show that Miss Pope 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.

Representations on sanction

The NMC submitted the aggravating and mitigating factors they considered to be engaged in this case.

The NMC submitted that this case is too serious to take no action or impose a caution order. Regarding a conditions of practice order, the NMC submitted that there are no clinical concerns which more obviously lend themselves to remedy by way of conditions of training or supervision. Further it reminded the panel that Miss Pope had little insight and identified the risk of repeating the behaviour as high.

The NMC submitted that the actions of Miss Pope were so serious and fundamentally incompatible with remaining on the Register, that a period of suspension would not adequately deal with this matter and that a striking off order was the appropriate and proportionate sanction in this case.

Decision and reasons on sanction

Having found Miss Pope'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 reminded itself that Miss Pope was in a position of leadership at Stroud and she abused and misused the power that position afforded her. It concluded that she stole the medication for personal gain. It noted that this act occurred over an extended period of time involving at least two different kinds of medication intended for patients. In light of all this, the panel was satisfied that this was a serious case of dishonesty.

The panel took into account the following aggravating features:

- As a midwife Miss Pope occupied a position of trust – taking medication meant for patients in her care, and not being open and honest about doing so, breaches that trust;
- Miss Pope held a position of seniority and leadership responsibility at Stroud;
- Miss Pope has no insight into the regulatory concerns and has not acknowledged the broader impact her actions had on her colleagues, patients or the profession;

- No evidence of remediation;
- Miss Pope has admitted to self-medicating whilst on duty which could be seen to impair her ability to work safely;
- Repeated actions of dishonesty, in that she stole more than once and over a period of time.

The panel also took into account the mitigating factors submitted by the NMC. It considered that the character references appear to have been written before Miss Pope accepted the police caution and do not address the concerns identified by this panel.

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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.

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 Miss Pope'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 Miss Pope's actions and dishonesty 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 Miss Pope'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 nature of the charges in this case. The conduct identified in this case was not something that can be addressed through retraining. Additionally, the dishonesty identified in this case did not lend itself easily to be addressed through conditions.

The panel concluded that the placing of a conditions of practice order on Miss Pope's registration would not adequately address the seriousness of this case and would not protect the public.

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;*

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

The panel noted that the conduct was not a one-off isolated incident as it was repeated over a period of time. Further, it noted that there is evidence of deep-seated attitudinal problems. The panel also noted that there is no evidence of repetition since the incident however, it had concluded that that there is a risk of repetition, and that Miss Pope has not demonstrated insight or any evidence of remediation.

The panel took account of the fact that Miss Pope has not engaged with her regulator since June 2021, when she indicated in an email an unwillingness to engage further. In light of this, the panel was satisfied that a suspension would serve no purpose.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering a striking-off order, the panel noted 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?*

Miss Pope's actions were significant departures from the standards expected of a registered midwife, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Pope's actions were serious and to allow her to continue practising 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 Miss Pope's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered midwife should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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 midwife.

This will be confirmed to Miss Pope in writing.

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 Miss Pope's own interest 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 representations made by the NMC that any substantive sanction order will not come into force for a period of 28 days, to allow for the possibility of an appeal. Due to the serious nature of the facts found proved, an 18-month interim suspension order is appropriate to cover the duration of the appeal period and any appeal that is forthcoming.

The panel took account of the advice of the legal assessor.

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 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.

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

That concludes this determination.