

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

**Substantive Meeting
Wednesday 12 January 2022**

Virtual Hearing

Name of registrant: Anne Kathleen Lunn

NMC PIN: 79G1612E

Part(s) of the register: Sub Part 2
RN6: Learning disabilities nurse (13 September 1981)
Sub Part 1
RN5: Learning disabilities nurse (1 September 2001)

Area of registered address: Derby

Type of case: Conviction

Panel members: Avril O'Meara (Chair, Lay member)
Emily Davies (Registrant member)
Richard Bayly (Lay member)

Legal Assessor: Michael Bell

Hearings Coordinator: Teige Gardner

Facts proved: Charge 1

Fitness to practise: Impaired

Sanction: Striking off order

Interim order: Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that Mrs Lunn was not in attendance and that the Notice of Meeting had been sent to Mrs Lunn's registered email address on 7 December 2021.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, dates and venue of the meeting.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Lunn has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

"That you, a registered nurse:

1. On 08 July 2020 were convicted at Derby Crown Court of fraud by abuse of position

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

Decision and reasons on facts

The charge concerns Mrs Lunn'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 Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a Mrs Lunn 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 Mrs Lunn 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.'*

Background

On 8 July 2020 Mrs Lunn pleaded guilty to a single count of fraud by abuse of position at Derby Crown Court. The offence to which Mrs Lunn pleaded guilty concerned her pension contributions while she worked as the Chief Executive and Company Secretary for a charity which helped those with learning disabilities ('Ability'). Mrs Lunn instructed Ability's finance manager to change her pension contributions, so that she contributed nothing from her salary, while Ability paid more towards her pension. The loss to Ability as a result of her fraud was £3945.53. During the investigation Mrs Lunn initially denied any wrong doing. She later pleaded guilty to the offence of fraud by abuse of position.

On 17 August 2020 Mrs Lunn was sentenced to nine months' imprisonment suspended for 12 months. Mrs Lunn was also disqualified from acting as a company director for a period of five years.

Mrs Lunn has not engaged with the NMC since February 2018.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect the public and take into account the wider public interest. This includes the need to declare and uphold proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. The panel was referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel took into account the NMC's written submissions, which state:

“We consider the registrant has displayed no insight. We take this view because the registrant has not engaged with the NMC since February 2018.

We consider there is a continuing risk to the public due to the registrant's lack of insight.

We consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The registrant's conduct engages the public interest because she engaged in criminal dishonesty.”

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v GMC* [2004] EWHC 2317 (Admin), and *GMC v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment

The panel went on to decide if as a result of the conviction, Mrs Lunn's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her 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 limbs b, c and d of *Grant* are engaged in this case.

Mrs Lunn's conviction resulted in her breaching fundamental tenets of the nursing profession (to act with honesty and integrity at all times) and therefore brought its reputation into disrepute. The panel noted that Mrs Lunn's actions had numerous negative impacts on those who worked for the charity and its service users.

The panel went on to consider if Mrs Lunn has provided sufficient evidence of insight, remorse and remediation. Regarding insight, the panel noted that Mrs Lunn has not engaged with the NMC since February 2018. Therefore, the panel found that Mrs Lunn has not shown any insight into the nature and extent of her dishonesty. Similarly, Mrs Lunn has not demonstrated any remorse for her actions, or how they have affected her colleagues and the service users of the charity.

The panel considered that charges relating to dishonesty, in this case a conviction for fraud, are difficult to remediate. The panel noted that through Mrs Lunn's non-engagement, there was no information before the panel to satisfy it that Mrs Lunn has remediated her dishonesty.

Therefore, the panel considered there to be a considerable risk of repetition in this case. The panel noted that Mrs Lunn's dishonesty occurred over a period of 4 months. In addition, the panel noted the Prosecution remarks, which stated that Mrs Lunn did not immediately admit to her dishonesty, during interview continued to maintain her innocence, and only pleaded guilty late on into the case. The panel was also of the view that, if the fraudulent conduct of Mrs Lunn was not discovered her dishonesty is likely to have continued for a much longer period. It took into consideration the Judge's sentencing comments, in which he noted the comments of the Pre-Sentence Report which considered Mrs Lunn to be a "*low risk*" of reoffending. The Judge went on to say that he considered Mrs Lunn to be of a "*nil-risk of reoffending*". The panel balanced these observations with the evidence before it. It found that Mrs Lunn has not shown any evidence of insight, remorse or remediation for her actions. Therefore, the panel determined there to be a considerable risk of Mrs Lunn reoffending. Therefore, it considered that a finding of impairment was 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. This 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 determined that, in this case, a finding of impairment on public interest grounds was also required. The panel was of the view that a well-informed member of the public would be concerned if a finding of impairment was not found, considering Mrs Lunn has been convicted for fraud. The panel determined that the public would lose confidence in the profession, and the NMC as its regulator, if it did not make a finding of impairment, considering the circumstances of this case.

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

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Lunn off the register. The effect of this order is that the NMC register will show that Mrs Lunn 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 panel noted that in the Notice of Meeting, dated 7 December 2021, the NMC had advised Mrs Lunn that it would seek the imposition of a striking off order if it found her fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mrs Lunn'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 Sanctions Guidance (SG). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Lack of insight into her dishonesty
- A pattern of dishonest misconduct over a period of time
- Failure to be open and honest when the misconduct was initially identified
- Failure to engage with the NMC proceedings

The panel considered there to be no mitigating factors in this case.

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 and wider public interest issues identified, an order that does not restrict Mrs Lunn'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 Mrs Lunn's 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 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 Lunn'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 misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Lunn'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 panel acknowledged that there was no evidence of repetition following the incident. In regard to the other three factors, the panel noted that this was not a single instance of misconduct, there is evidence of harmful deep-seated personality or attitudinal problems and there has been no evidence of insight.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and a serious breach of the fundamental tenets of the profession. In this particular case, the panel determined that a suspension order would not therefore be a sufficient, appropriate or proportionate sanction.

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

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel determined that Mrs Lunn's actions were significant departures from the standards expected of a registered nurse, 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 Mrs Lunn'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.

The panel noted that Mrs Lunn's actions occurred over a prolonged period of time, and related to serious misconduct, in this case dishonesty, for her own financial gain. The panel considered her actions to be premediated and systematic, and, even when her misconduct was discovered, she did not admit to her actions and continued to maintain her innocence. The panel was of the view that this highlights Mrs Lunn's harmful, deep-seated attitudinal issues. The panel further noted that Mrs Lunn has not provided evidence of remorse or insight into her actions, and has not engaged with the NMC since February 2018.

Having regard to the matters it identified, in particular the effect of Mrs Lunn's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of a striking off order would be sufficient in this case.

The panel considered that this order was necessary to uphold the standards of the profession and mark the importance of maintaining public confidence in the profession.

This will be confirmed to Mrs Lunn 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 Mrs Lunn'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 an interim suspension order of 18 months was appropriate and proportionate in the circumstances of this case. The NMC, in its written submissions, state that if Mrs Lunn appeals this decision, the process could take up to 18 months. Therefore an interim suspension order is required to protect the public and uphold the public interest in this case.

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 to allow for an appeal period if Mrs Lunn is to appeal this order.

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

That concludes this determination.