

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

**Substantive Hearing
Monday 28 – Tuesday 29 November 2022**

Virtual Hearing

Name of Registrant: Louise Anne Chapman

NMC PIN 20C2482E

Part(s) of the register: Registered Nursing Associate
2 September 2020

Relevant Location: Cumbria

Type of case: Conviction

Panel members: Richard Youds (Chair, lay member)
Mary Scattergood (Registrant member)
Tom Ayers (Lay member)

Legal Assessor: Karen Rea

Hearings Coordinator: Catherine Acevedo

Nursing and Midwifery Council: Represented by Debbie Churaman, Case
Presenter

Mrs Chapman: Present and represented by Bramble Badenach-
Nicolson, Counsel instructed by the Royal
College of Nursing (RCN)

Facts proved: 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, a registered nursing associate:

On 9th July 2021 at Preston Crown Court, pleaded guilty to one charge of commit an act/ series of with intent to pervert the course of public justice, contrary to common law.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Churaman, on behalf of the Nursing and Midwifery Council (NMC) to amend the charge to read nursing associate instead of nurse.

Proposed amendment

*That you, a registered ~~nurse~~ **nursing associate**:*

It was submitted by Ms Churaman that the proposed amendment would provide clarity.

Ms Badenach-Nicolson made no objection to the application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest 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 to ensure clarity and accuracy.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms Badenach-Nicolson made a request that parts of this case be held in private on the basis that there may be reference to your private family life or a family member's health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Churaman outlined Rule 19 to the panel.

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 private family life or a family member's health, the panel determined to hold those parts of the hearing in private. The panel determined that to protect your right to private and family life outweighed any public interest.

Background

At the time the charges arose, you worked as a nursing associate at The Cumberland Infirmary.

The particulars of your offence began with the reporting by three women on 5 November 2020 of a male exposing himself whilst in a vehicle whilst they themselves were walking alongside the vehicle. They reported the incident to the police and an investigation led police to the suspicion that your brother, may have been responsible for those offences, and as a result he was arrested on the 3 December 2020 and released on bail.

On the 9 December 2020, you attended the police station to make a complaint and subsequently a formal witness statement alleging that you too, had been the victim of an offence in very similar circumstances to those outlined by the previous complainants but gave a description of an offender vastly different from that of your brother. You were arrested in relation to this and later, in interview, you admitted that those circumstances were entirely false and that the purpose of you making such false claims was to divert the police's attention away from your brother in the hope that they concluded he was not responsible for the earlier offending.

On 9 July 2021 at Preston Crown Court, you pleaded guilty to one charge of commit an act/ series of with intent to pervert the course of public justice, contrary to common law. You were sentenced to 4 months imprisonment suspended for 24 months.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Badenach-Nicolson who informed the panel that you admitted charge 1.

The panel therefore finds charge 1 proved, by way of your admission.

The panel was also 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).

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your 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.

Submissions on impairment

Ms Churaman addressed the panel on the issue of impairment and reminded the panel 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. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Churaman invited the panel to find your fitness to practice is impaired by reason of your conviction. She referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identified relevant standards where your actions breached the Code.

Ms Churaman submitted that limbs b, c and d were engaged in the *Grant* test.

Ms Badenach-Nicolson submitted that you fully accept that your fitness to practice is impaired because of your conviction.

The panel accepted the advice of the legal assessor.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the conviction, your fitness to practise is currently impaired.

Nursing associates 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 nursing associates with their lives and the lives of their loved ones. To justify that trust, nursing associates 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.

The panel determined that as a result of the conduct leading to your conviction there was the risk that the criminal justice system would be undermined and that this would have an impact on the vulnerable victims of the crimes being investigated. Your conduct had breached one of the fundamental tenets of the nursing profession and brought the profession and its reputation into disrepute. The panel determined that your conviction related to a serious offence involving dishonesty which was premeditated and demonstrated deliberate, convoluted and complex planning. Therefore, the panel was satisfied that public confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel noted that you made a guilty plea at the criminal proceedings, and you admitted the charge and impairment for this NMC hearing. However, the panel determined that you have demonstrated incomplete insight and remediation, save for your admissions to the charge, your early plea of guilty at the Crown Court and some aspects of your reflective statement. However, the panel noted that, whilst you gave reasoning why these events took place, you have not fully addressed, for example, the impact of your actions on the administration of justice, the police force and the victims of your crime. In addition, it lacked any robust forward-looking reassurance of reducing or removing the risk of repetition in the future. The panel considered that although your conviction was not related to your clinical practice, vulnerable members of the public were exploited by your dishonesty and, therefore, there remains a potential risk to patients and the public in the future. 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 and midwifery professions and upholding the proper professional

standards for members of those professions. The panel determined that a reasonable and well-informed member of the public would be shocked if a finding of impairment was not made for a registrant convicted of such an offence and a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have 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.

Your evidence under affirmation

The panel first heard evidence from you under affirmation. You told the panel that you are currently an assistant practitioner band 4 working in a hospital doing permanent 12 hour night shifts. You said you work in a small team role helping staff on the wards. You said you take bloods, perform cannulation and undertake male catheterisation and also help out staff on the wards with basic clinical care.

[PRIVATE].

[PRIVATE].

You said you did not have a good relationship with your mother growing up and when you reconnected with your family in December 2020 it had been 15 years since you had last seen them. You said you wanted to be the better person and get in contact.

You said when you decided to lie for your brother [PRIVATE] you were in shock about that and about your brother being in trouble with police. You said you did not know how you and your family would cope if anything happened to you dad and your brother. You said you are a very emotional person, and you are sometimes too helpful.

You said you confessed about your offence and know you should not have done it, you said you will forever feel guilty and ashamed. You said that you know you should have dealt with the situation differently and your actions were a lapse in judgement. You said you sympathise with the victims. You said you have been a victim of crime yourself, so you understand how it feels. You also said that you understood the impact the on the court system.

Under cross examination you said that you did not think that your actions could have led to an innocent person being arrested. You said you lied throughout the process but that it happened so fast and that you were not aware that your brother was going to ask you to do what you did. You said that you thought you were doing the right thing at the time but emotions got in the way and 'it all went very wrong'. You also accepted that this was a concerted act.

In cross-examination, when you were asked about why your reflective piece did not refer to the impact of your acts on the criminal justice system and the police, [PRIVATE]. You then apologised for having left it out of the written document.

You informed that panel that you have never been in trouble with the police before or had any concerns from an employer.

You said you are a very private person but in future you know you have to be more open and honest and talk to your husband if anything similar happens again, although you said you would not repeat your actions. You said you know you have to take a step back and think with your head and not your heart.

You said you love nursing, and it is in your nature to help and care for people. You enjoy building rapport with people and seeing patients get better. You said you have found your calling and you do not know what you would do if it was taken away from you. You said if you can remain on the register, you would like to go on to get your full nursing degree. You told the panel that a striking-off order would be devastating and you would lose everything.

Submissions on sanction

Ms Churaman submitted that this was not a case which involved public protection issues directly but a public interest case where the public would expect action to be taken. She therefore submitted that a striking-off order is the appropriate sanction in this case. She submitted that your dishonesty had occurred in several stages and you are currently serving a suspended sentence until the end of July 2023.

Ms Churaman submitted that the aggravating factor of this is that you committed a serious criminal offence which involved dishonesty, and the mitigation in this case was that you had made full admissions and you had expressed remorse.

Ms Churaman submitted that to take no further action or impose a caution order was inappropriate due to the level of seriousness of the offence. She submitted that a conditions of practice order would not address the concerns which are not clinical and would therefore not be appropriate. In terms of a suspension order, Ms Charuman submitted that your actions fell far below the standards expected for a suspension order to be the appropriate sanction and your actions were fundamentally incompatible with you remaining on the register.

Ms Churaman submitted that a striking-off order is the appropriate sanction because of lack of insight and remediation you have demonstrated, the serious nature of your offending and loss of public confidence in the profession.

Ms Badenach-Nicolson submitted that this is an unusual case. Whilst the conviction is a very serious one it has no bearing on your clinical practice. She invited the panel to impose a caution order.

Ms Badenach-Nicolson submitted that you have demonstrated full insight. She submitted that the custodial sentence was suspended, and you accept the potential harm you could have caused, and you are deeply ashamed. She submitted that you have answered questions during your evidence as simply as you can. She submitted that you came clean about your offences and pleaded guilty, and you made a self-referral to the NMC on 18 June 2021. Ms Badenach-Nicolson submitted that during your oral evidence you accepted that you have done wrong, and you have not tried to hide away from your mistakes. She submitted that your offending can be characterised as a momentary lapse in judgement, which has haunted you and will do so for the rest of your life.

Ms Badenach-Nicolson submitted that there are no issues with your clinical work, and you have worked throughout this interim period and during the pandemic without concern. There has been no restriction to your practice for the last year and a half and the panel can be reassured that you should be able to continue to practise for the duration of your sentence.

Ms Badenach-Nicolson referred the panel to the positive references from your line manager and colleagues indicating you are supported and which speak highly of your clinical practice. She submitted that there is no evidence that you have repeated your actions and the panel can be assured that there will be no repetition. Ms Badenach-Nicolson submitted that you are of previous good character in the criminal sense. She submitted that you did not commit your offence for personal gain.

Ms Badenach-Nicolson submitted that it is clear that you made a big mistake and a suspension order or striking-off order would be detrimental to the nursing profession and would be draconian in the circumstances.

Decision and reasons on sanction

Having found your 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 took into account the following aggravating features:

- Your conviction involved a premeditated and planned series of high-level acts which were dishonest for the intended benefit of a member of your family, which you did not admit to until suspected by the police.
- Your behaviour demonstrated deep-seated attitudinal issues, because of the detailed and sustained level of planning involved.

The panel also took into account the following mitigating features:

- You pleaded guilty to the criminal offence, and you admitted the charge and impairment at these NMC proceedings
- The positive references and testimonials from your colleagues attesting to your good clinical practice.

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, an order that does not restrict your practice would not be appropriate in the circumstances. The panel noted Ms Badenach-Nicolson's submission, that no restrictions had been placed on your practice in the last year and a half and that, therefore, a caution order would be the appropriate order in your case, as there had been no expectation by that panel that a higher-end sanction would be imposed in your substantive hearing. However, this panel is not bound by the decision of another panel within the NMC interim procedure and, in any event, it considered that interim order panels undertake a risk assessment at the investigation stage and the panel at this hearing has found the facts proved and found your fitness to practice impaired with its reasons already set out. The panel therefore determined that a caution order would be inappropriate in view of the expressed 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 your 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 behaviour identified which led to your conviction was not something that can be addressed through retraining as it was not a clinical concern.

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 considered that your behaviour which led to your conviction was not a lapse in judgement but involved a premeditated and planned series of high-level acts of dishonesty and was not a single instance. The panel considered that your dishonest criminal actions were at the highest end of the spectrum of seriousness and demonstrated attitudinal problems in relation to your approach in achieving your dishonest objective in this matter. The panel considered that this was demonstrated by the judge's sentencing remark as follows:

"It is absolutely not a victimless crime, and it is a very, very serious crime."

Furthermore, the panel determined that, in your oral and written evidence, you have not demonstrated genuine insight into your actions. The panel concluded that your answers to questions in your oral evidence today tended towards a late and superficial acceptance of the impact of your actions on the criminal justice system, the police and the victims of your brother's crime. In the panel's judgment, you seemed to be concerned primarily for your [PRIVATE] family when expressing your regret.

The panel noted the judge's sentencing comments:

"This was a deliberate attempt, in full knowledge of the potential consequences, to pervert the course of justice. It was a deliberate attempt to interfere with an investigation which might have led to three otherwise truthful complaints being made by entirely innocent victims being disbelieved because of the spanner that you attempted to throw into the works, and it was therefore an incident of high culpability. As to the harm, the actual harm that was caused is minimal. The police realised almost immediately what you were up to and what this complaint was about. It did not detract them from what was an otherwise proper investigation, and

it is fortunate indeed for you, and indeed for the victims of your brother's offending, that it did not prevent him from being brought to justice for what he did. But the risk of harm was higher and you will have known what the risk of harm was. You will have known the risk was that these victims would have been disbelieved and that the investigation would have been de-railed".

The panel saw no evidence that you had developed any further insight into your behaviour since the judge's comments. The panel determined that you have severely limited insight into the impact of your actions on the criminal justice system, the risk of victims not being believed and police time being wasted. The panel was also not satisfied that you understood the potential impact your actions have had on the profession and the public's ability to place trust in nursing associates.

The panel saw no evidence of repetition of your behaviour since this incident and it noted the positive references and testimonials which spoke to your good clinical practice. However, the panel determined that your actions, as highlighted by the facts and impairment found proved, was a significant departure from the standards expected of a registered nursing associate. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not 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?*

Your actions were significant departures from the standards expected of a registered nursing associate 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 severely 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 effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nursing associate should conduct themselves, 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 nursing associate.

This decision will be confirmed to you 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 your own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Churaman. She submitted that an interim suspension order for a period of 18 months is required to cover the period of appeal and that it would be in the wider public interest in light of the panel's findings including the sanction of a striking-off order.

The panel also took into account the submissions of Ms Badenach-Nicolson. She submitted that you have practised for the last year and half without any restriction and therefore she asked the panel to consider that an interim order is not required. She also submitted that it is very unusual to impose an interim suspension order on the grounds of public interest alone.

Decision and reasons on interim order

The panel was satisfied that an interim order is in the public interest. The panel had regard to the seriousness of the case 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 consistent, due to the reasons already identified in the panel's determination for imposing the striking-off order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal notice period of 28 days or, if you submit an appeal, a longer period before that appeal might be heard.

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.