

**Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
4 June 2019**

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

Name of registrant:	Miss Jacqueline Ann Shacklady
NMC PIN:	85H0727E
Part(s) of the register:	Specialist Practitioner – District Nursing 29 July 2004 Registered Adult Nurse Level 1 (1 March 2001) Community Practitioner Nurse Prescriber (1 March 2003)
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Nicholas Cook (Chair, Lay member) Patricia Lynch (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Oliver Wise
Panel Secretary:	Kelly O'Brien
Consensual Panel Determination:	Accepted
Facts proved by admission:	All
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim Order:	Interim Suspension order – 18 months

Details of charge

That you, a Registered Nurse:

- 1. At Cardiff Crown Court on 15th August 2018 were convicted of two counts of Fraud contrary to Section 1 of the Fraud Act 2006.*

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

Decision on service of notice of meeting

The panel was informed at the start of this meeting that Ms Shacklady had been sent notice that this substantive meeting was to take place on or after 3 June 2019. Notice was sent to Ms Shacklady's registered address by recorded delivery and by first class post on 16 May 2019. Further, the panel noted that notice of this meeting was also sent to Ms Shacklady's representative at the Royal College of Nursing (RCN) on 16 May 2019.

The panel had regard to an email from the NMC Case Officer to Ms Shacklady's representative dated 15 May 2019 which stated: *"I understand that you would like this matter to be expedited sooner rather than later. The current notice period for a Substantive Meeting is 35 days, if you are prepared to accept short notice & confirm this in writing to me, we can have the meeting listed for a date in the week commencing 3 June 2019 OR the week commencing 10 June 2019"*

Ms Shacklady's representative responded by way of email dated 15 May 2019, as follows: *"In the meantime, I can also confirm that we are happy to waive notice for the listing of the substantive meeting and content for it to be listed on week commencing 3 or 10 June 2019."*

The panel accepted the advice of the legal assessor who noted that the 28 day notice period, as required by Rule 11A of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules) had not been complied with, but that it had been waived by agreement.

The panel noted that Ms Shacklady's representative by way of email dated 15 May 2019, waived the requirement for notice and confirmed that they were content for the meeting to proceed on or after 3 June 2019. In the light of all of the information available, the panel was satisfied that Ms Shacklady had been served with notice of this meeting in accordance with the requirements of Rules 11A and 34.

Consensual panel determination

The panel was provided with a provisional agreement of a consensual panel determination (the “CPD agreement”) which had been reached with regard to this case between the NMC and Ms Shacklady.

The agreement sets out Ms Shacklady’s admission to the facts alleged in the charge and that her fitness to practise is currently impaired by reason of her conviction. It is further stated in the agreement that an appropriate sanction in this case would be that of a striking-off order.

The panel has considered the provisional agreement reached by the parties.

That provisional agreement reads as follows:

Ms. Shacklady is aware of the CPD hearing. Ms Shacklady does not intend to attend the hearing and is content for it to proceed in her and her representative’s absence.

Ms. Shacklady will endeavour to be available by telephone should any clarification on any point be required.

The Nursing and Midwifery Council and Ms. Jacqueline Ann Shacklady, PIN 85H0727E (“the parties”) agree as follows:

CHARGES

1. Ms. Shacklady admits the following charges:

That you, a Registered Nurse:

2. At Cardiff Crown Court on 15th August 2018 were convicted of two counts of Fraud contrary to Section 1 of the Fraud Act 2006.

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

AGREED FACTS

2. Ms. Shacklady was admitted to the Register maintained by the NMC in 1985. She is registered as a Registered Nurse – Adult.
3. At the time the offences were committed Ms Shacklady was employed as a Band 7 Senior Nursing Sister by the Aneurin Bevan University Health Board. She was responsible for managing a team of District Nurses and other healthcare professionals who were based at Caldicot Health Centre, Caldicot, Monmouthshire, Wales.
4. The two fraud convictions relate to improper claims for overtime, enhanced hours and travel expenses from Ms Shacklady's employers. Ms Shacklady abused her position of authority as a Band 7 Nurse who was responsible for authorising the timesheets of other members of staff and utilised her knowledge of the financial systems in place for her own financial gain. Ms Shacklady submitted 72 false timesheets between March 2015 and April 2016. As a result she received the sum of £10,402.92 from her employers to which she was not entitled. The total loss to her employers including pension and national insurance contributions amounted to £17,032.42.
5. On 15th August 2018 Ms Shacklady entered a guilty plea to two counts of Fraud at a Plea and Trial Preparation Hearing at Cardiff Crown Court. Ms. Shacklady was sentenced that day. In relation to the first count of Fraud Ms. Shacklady was sentenced to 12 months imprisonment suspended for 12 months. In addition a Curfew requirement was imposed for 20 weeks and a Rehabilitation Activity Requirement was imposed for 15 days. Ms. Shacklady was ordered to pay costs of £2,560.42, and a victim surcharge of £100. The Judge imposed no separate penalty

in respect of the second count of Fraud. Ms Shacklady repaid the sum of £10,402.92 to her employers prior to the Crown Court hearing.

6. Ms. Shacklady was dismissed by her employers on 20th August 2018.
7. Ms. Shacklady admits the charges.

IMPAIRMENT

8. Ms. Shacklady is currently impaired by reason of her conviction on public interest grounds. In agreeing this the parties have had regard to the questions posed Mrs Justice Cox adopting the approach of Dame Janet Smith in the 5th Shipman Report in Council for Healthcare Regulatory Excellence and (1) Nursing and Midwifery Council (2) Paula Grant [2011] EWHC 927 which are:-
 - a. Has [the Registrant] 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 [the Registrant] in the past brought and/or is liable in the future to bring the professions into disrepute; and/or
 - c. Has [the Registrant] in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or
 - d. Has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future?
9. Limbs b, c and d are engaged in this case.

10. With regard to limb b. nurses and midwives are expected to act with honesty and integrity so that the trust and confidence placed in them by patients, their families and the public is not undermined. The gravity of Ms. Shacklady's offences of dishonesty are liable to bring the profession into serious disrepute.

11. With regard to limb c. Ms Shacklady's conduct has breached the fundamental tenets of honesty and integrity which are expected of every registered nurse and midwife. In addition she has breached the following standards of the Code of Conduct (2015):-

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, treating people fairly and without discrimination, bullying or harassment
- 20.4 keep to the laws of the country in which you are practising
- 20.8 act as a role model of professional behaviour for students and newly qualified nurses and midwives to aspire to

21 Uphold your position as a registered nurse or midwife

To achieve this, you must:

- 21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care

With regard to limb d. Ms Shacklady has acted dishonestly repeatedly and over a significant period of time.

12. Article 3(4A) of The Nursing and Midwifery Order 2001 states:-

The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

(a)...

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions.

13. The case of **Grant** makes it clear that the public interest must be considered paramount and Cox J stated at para 71:

"It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession".

14. A finding of current impairment is necessary on public interest grounds to give effect to the Council's objectives as set out above Ms Shacklady has admitted the regulatory concern and has expressed remorse for her actions through her representatives. However in the absence of a finding of impairment public confidence in the profession and the NMC would be seriously undermined.

SANCTION

15. The appropriate sanction in this case is a Striking-Off Order.

16. The aggravating features of this case are that the dishonesty was premeditated and systematic. The dishonesty was repeated on 72 occasions over a prolonged period.

17. The mitigating features are that the Registrant pleaded guilty to both offences before trial, has admitted the regulatory concern and that her fitness to practise is impaired by reason of her convictions.

18. The gravity of Ms Shacklady's convictions requires the Council to take action in relation to her registration in order to maintain public confidence in the profession and to maintain proper professional standards and conduct for nurses and midwives. To take no further action would not be appropriate or sufficient to meet the public interest.
19. A Caution order would not be appropriate or sufficient. The NMC sanctions guidance indicates such an order is appropriate for lower end of spectrum of misconduct.
20. A Conditions of Practice Order would not be appropriate or sufficient in this case as conditions cannot be formulated which would meet the dishonesty or the public interest.
21. The NMC guidance on sanctions for serious cases indicates that whilst dishonesty is always serious not all dishonesty is equally serious. It sets out the forms of dishonesty which are most likely to call into question whether a nurse/midwife should be allowed to remain on register. This includes "premeditated, systematic or longstanding deception". The facts of this case fall within that description.
22. The guidance on Suspension Orders indicates that such an order may be appropriate where there is no evidence of deep seated personality or attitudinal problems. The facts underlying Ms Shacklady's convictions are evidence of an attitudinal problem and therefore a Suspension Order is not appropriate. In addition a Suspension Order will not mark the gravity of the convictions and the need to meet the public interest.
23. The guidance on Striking-Off Orders poses the following questions:-

Do the regulatory concerns about the nurse/midwife raise fundamental questions about their professionalism?

Ms Shacklady's conduct has fallen significantly short of the conduct and standards expected of a nurse/midwife by virtue of her convictions and fundamentally undermines her trustworthiness and professionalism

Can public confidence in nurses and midwives be maintained if nurse/midwife is not removed from the register?

It is a fundamental requirement of all nurses and midwives that they act with honesty and integrity so that they can justify the trust and confidence placed in them by patients, their families and the wider public. Ms Shacklady has seriously undermined that trust and confidence by acting dishonestly and public confidence in nurses and midwives cannot be maintained if she remains on the Register.

Is striking off the only sanction which will be sufficient to protect patients, members of the public or maintain professional standards?

A Striking-Off Order is the only sanction which will maintain professional standards.

24. In *Bolton v Law Society* [1993] EWCA Civ 32 Sir Thomas Bingham MR stated:-

“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 the price.”

25. Ms Shacklady's actions are so serious as to be fundamentally incompatible with ongoing registration as a nurse and as such any impact upon her as an individual is outweighed by the need to maintain confidence in the profession as a whole. Only a striking off order adequately performs this vital function. In the circumstances the appropriate and proportionate sanction is a Striking-Off order.

INTERIM ORDER

26. It is in the public interest for there to be an Interim Suspension Order for 18 months to cover the appeal period for the reasons set out above.

The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings impairment and sanction is a matter for the panel. The parties understand that, in the event that a panel does not agree with this provisional agreement, the admissions to the charges set out at section 1 above, and the agreed statement of facts set out at section 2 above, may be placed before a differently constituted panel that is determining the allegation, provided that it would be relevant and fair to do so.

Decision and reasons on the consensual panel determination:

The panel decided to accept the provisional CPD Agreement, and decided that the appropriate sanction was a striking-off order.

The panel accepted the advice of the legal assessor, who referred the panel to the NMC's Sanctions Guidance ("SG") and to the NMC's guidance on Consensual Panel Determinations. He reminded the panel that it could accept, invite an amendment or reject the provisional agreement reached between the NMC and Ms Shacklady. Further, the panel should consider whether the provisional agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour. The panel had regard to the principles in the cases of: *CHRE v (1) NMC and (2) Grant* [2011] EWHC 927 (Admin), and *Bolton v Law Society* [1993] EWCA Civ 32.

Facts

The panel noted that Ms Shacklady admitted the facts of the charges in paragraph 1 of the CPD Agreement. The panel noted that Ms Shacklady received a conviction. Accordingly, the panel was satisfied that the charges are found proved by way of Ms Shacklady's admission and by reason of her conviction.

The panel considered that the agreed facts were set out in paragraphs 2 - 7 of the CPD Agreement, and accordingly endorsed paragraph's 2 - 7 of the CPD Agreement.

Impairment

The panel then went on to consider whether Ms Shacklady's fitness to practise is currently impaired by reason of her conviction. Whilst acknowledging the agreement between the NMC and Ms Shacklady, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel accepted the advice of the legal assessor.

The panel adopted the findings of the CPD agreement in relation to impairment, as set out at paragraphs 8 - 14. The panel had regard to the observations set out in *Grant* by Justice Cox, and considered that the following three limbs were engaged:

- Ms Shacklady had acted in a way to bring the medical profession into disrepute
- Ms Shacklady had breached a fundamental tenet of the profession
- Ms Shacklady had acted dishonestly.

The panel endorsed paragraph 11 of the CPD agreement and agreed that Ms Shacklady had breached paragraphs 20.1, 20.2, 20.4, 20.8, 21.3 of the Code of Conduct (2015).

The panel considered that Ms Shacklady has not provided any evidence of insight, or remediation.

In all the circumstances, the panel found that Ms Shacklady's conduct fell well below the standard expected of a registered nurse. The panel considered that Ms Shacklady's conduct has the potential to damage the reputation of the profession and found that her fitness to practise is currently impaired. Any other finding would undermine public confidence in the profession.

Sanction

Having found Ms Shacklady's fitness to practise currently impaired the panel went on to consider what sanction, if any, is appropriate in this case. The panel bore in mind that any sanction imposed must be appropriate and proportionate. The purpose of any sanction is not intended to be punitive even though it may have a punitive effect. The panel had careful regard to the SG. The decision on sanction is a matter for the panel exercising its own independent judgement.

The panel turned to the question of whether the sanction proposed in the CPD agreement is appropriate. In so doing it considered each available sanction in turn, starting with the least restrictive sanction and moving upwards.

The panel had regard the aggravating and mitigating features in this case.

The panel considered the aggravating features of this case, and accepted and endorsed paragraph 16 of the CPD Agreement.

The panel considered the mitigating features of this case, and accepted and endorsed paragraph 17 of the CPD Agreement.

The panel first considered whether taking no action was an appropriate and proportionate response. The panel endorsed paragraph 18 of the CPD agreement and accepted that this would be inappropriate in view of Ms Shacklady's conviction, and the seriousness of the case. The panel decided that it would be neither proportionate nor protect the public, nor be in the public interest to take no further action. The panel determined that a caution order would be inappropriate for the same reasons. The panel endorsed paragraph 19 of the CPD Agreement.

The panel went on to consider whether a conditions of practice order would be appropriate. The panel endorsed paragraph 20 of the CPD agreement and accepted

that a conditions of practice order would be not be workable in this case as there are no identified issues with Ms Shacklady's clinical practice that could be addressed through re-training. The panel also considered that a conditions of practice order would be insufficient to maintain public confidence in the NMC as regulator, as it would not serve to mark the seriousness of Ms Shacklady's conviction and associated dishonesty.

The panel went on to consider the imposition of a suspension order and endorsed paragraph 21 - 22 of the CPD Agreement. Ms Shacklady's conduct was a serious breach of trust and a significant departure from the standards expected of a registered nurse.

The panel considered that Ms Shacklady's dishonesty was;

- Premeditated, systematic and long standing deception. Ms Shacklady planned and repeated the fraud.
- Ms Shacklady used her position as a senior nurse to assist her in her crimes. The panel noted that Ms Shacklady was in a position of responsibility as a Band 7 Nurse. She had responsibility for overseeing, checking and signing off other staff members time sheets, and accordingly had knowledge of how to abuse the system.
- Personal financial gain from her actions and a breach of trust.

The panel found that on the scale of dishonesty this was at the most serious end. The panel considered that the only mitigating factor was that there was no direct risk of harm to patients.

The panel has determined that given the aggravating features and the dishonesty in this case a suspension order would not be an appropriate or proportionate sanction. The panel was not satisfied that a period of suspension would satisfy the public interest or uphold public confidence in the profession or the NMC. The public would be both shocked and dismayed to discover that a nurse had abused her position on 72 occasions to commit fraud and take money from the NHS.

Ms Shacklady's actions are fundamentally incompatible with her remaining on the register. The panel was of the view that the circumstances in this particular case demonstrate that Ms Shacklady's actions were so serious that 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, the panel determined that the appropriate and proportionate sanction is that of a striking-off order, and endorsed paragraphs 23 - 25 of the CPD Agreement. It concluded that, given the circumstances of the offence, nothing short of this would be sufficient to uphold public confidence and the reputation of the profession. It would also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Conclusion

For the reasons set out above, the panel determined that a striking-off order was the appropriate sanction in this case.

The panel considered that it was in the public interest to impose an interim suspension order for the period of 18 months to cover the appeal period, and endorsed paragraph 26 of the CPD Agreement.

This decision will be confirmed to Ms Shacklady in writing.

This concludes the determination.