

Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Meeting
12 February 2020

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

Name of registrant:	Tressider Lisa Duncan
NMC PIN:	12F2446E
Part(s) of the register:	Registered Nurse – Sub Part 1 RNA: Adult Nursing – 8 September 2012
Area of Registered Address:	England
Type of Case:	Conviction
Panel Members:	Caroline Healy (Chair, Registrant member) Sue O’Sullivan (Registrant member) Richard Bayly (Lay member)
Legal Assessor:	James Holdsworth
Panel Secretary:	Catherine Acevedo
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:

That you, a registered nurse, on 28 March 2019 were convicted at the Sheffield Magistrates Court of:

- 1. Wound/inflict grievous bodily harm without intent contrary to section 20 of the Offences Against the Person Act 1861.*
- 2. Assault a person thereby occasion them actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861.*

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 considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the *Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended* state:

‘11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to Mrs Duncanno later than 28 days before the date the meeting is to be held.

*34.(3) Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post’*

The letter of notice of this substantive meeting was sent to Mrs Duncan’s address on the register on 6 January 2020. The panel is satisfied that the notice was sent more

than 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

Background

Mrs Duncan first came onto the NMC register on 8 September 2012 and is qualified as an adult registered nurse. Mrs Duncan's PIN is currently effective until 30 September 2021.

On 25 February 2019, the NMC received a self-referral from Mrs Duncan advising that she had been charged on 21 February 2018 (believed to be 21 February 2019) with criminal offences relating to an incident occurring on 22 September 2018 (believed to be 23 September 2018) involving her "*ex-friend and his partner whilst under the influence of alcohol*".

The NMC subsequently received confirmation that Mrs Duncan was convicted on 28 March 2019 at the Sheffield Magistrates Court of the offences of:

- a. Wound/inflict grievous bodily harm without intent contrary section 20 of the Offences Against the Person Act 1861.
- b. Assault a person thereby occasioning them actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861.

At Sheffield Crown Court on 18 April 2019 Mrs Duncan was sentenced to 21 months imprisonment and ordered to pay a victim surcharge of £140.00 within four months of release.

The background to the convictions is that on 23 September 2018 Mrs Duncan entered into an altercation with the two victims (Victim 1 and Victim 2) who were known to the Registrant. Mrs Duncan was under the influence of alcohol at the time.

On or about the 22 September 2018 at around 23:50 Victim 1 and Victim 2 were returning home from a night out. Mrs Duncan and her partner were in a vehicle and

beeped the horn at them. Both Mrs Duncan and her partner then got out of the car and ran across to Victim 1 and Victim 2. Mrs Duncan grabbed the hair of Victim 1, scratched her left breast and pushed her to the floor. Mrs Duncan then sat on Victim 1 and repeatedly hit her in the face. Mrs Duncan's partner was assaulting Victim 2 at this time. Mrs Duncan got off Victim 1 and punched Victim 2 in the face.

Victim 1 subsequently called for the police and Mrs Duncan and her partner got into their vehicle and drove off. Victim 1 and Victim 2 were taken hospital as a result of the injuries they have sustained.

The assault on Victim 1 gave rise to the section 47 offence as she sustained scratches by way of injury. The assault on Victim 2 gave rise to the section 20 offence due to the nature of the injuries being very severe, including a bleed on the brain. The bleed on the brain had been identified as potentially life threatening and resulted in an inpatient stay at hospital.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case. 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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard and accepted the advice of the legal assessor.

The charges concern Mrs Duncan's conviction and, having been provided with a copy of the certificate/memorandum of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the Rules which states:

- (2) Where a registrant 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 registrant 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.

The panel also noted that in the case management form dated 18 July 2019, Mrs Duncan admitted these convictions.

Decision on impairment

The panel next went on to decide if as a result of this conviction Mrs Duncan's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) in reaching its decision, in paragraph 74 she said:

In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the

public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. ...
- 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.

The panel found that limbs b and c are engaged.

The panel took into account the background to the allegations. There is no suggestion that patients would be at risk of harm as a result of these convictions because the offending occurred outside of the Mrs Duncan's professional practice and related to matters in her personal life. As such, limb a in the test set out in *Grant* is not engaged.

The panel found that Mrs Duncan's offending conduct has brought the nursing profession into disrepute. Mrs Duncan was convicted of serious violent offences, resulting in injury to Victim 1 and significant, potentially life threatening injury to Victim 2. Additionally, the panel noted that Mrs Duncan's convictions resulted in a significant criminal sentence of immediate custody for 21 months. Such conduct seriously calls into question the good name of nurses, not least because they are expected to obey the laws of the country in which they are practising.

Similarly, the panel noted that Mrs Duncan's conduct has breached one of the fundamental tenets of the profession. *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates 2015* requires that nurses act with honesty and integrity at all times. Mrs Duncan's conduct, which led to her criminal convictions, demonstrates a lack of integrity and must be said to be a breach of this fundamental tenet of the nursing profession.

The panel was of the view that given that Mrs Duncan's actions resulted in serious criminal convictions and a substantial criminal sentence, it may be that her conduct is not capable of remediation. It noted that Mrs Duncan has not provided any evidence of remediation in the form of reflection; as such, it cannot be said that the conduct is highly unlikely to be repeated. The panel noted her responses dated 2 June 2019 and 7 January 2020 where she expresses some insight and remorse into her actions and the impact they have had on the profession and the NMC as regulator.

The panel determined that, in this case, a finding of impairment on public interest grounds alone was required. Given the serious nature of the convictions, albeit relating to Mrs Duncan's private life, the public would expect the NMC as a regulator to make a finding of impairment in order to mark the conduct as unacceptable. If a finding of impairment were not made, public confidence in the profession and the NMC as the regulator, would be seriously undermined.

Having regard to all of the above, the panel was satisfied that Mrs Duncan's fitness to practise is currently impaired by reason of her conviction, on public interest grounds, in order to maintain public confidence in the profession and the regulatory process.

Determination on 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 Duncan off the register. The effect of this order is that the NMC register will show that Mrs Duncan 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. The panel accepted the advice of the legal assessor. 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) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the following to be aggravating factors of the case:

- The offence was so serious it warranted the imposition of a lengthy, immediate custodial sentence.
- The harm to Victim 2 was significant and potentially life threatening. (The extent of harm caused is not always an aggravating factor; however, given

the circumstances in which the harm was caused, it could be considered to be an aggravating factor in this case.)

- Mrs Duncan had provided no evidence of remediation.
- Mrs Duncan's has demonstrated limited insight into her actions.

The panel considered the following to be mitigating factors of the case:

- Mrs Duncan has had no previous NMC findings made against her.
- Mrs Duncan made full admissions to the charges and accepted current impairment.
- Mrs Duncan self-referred.

The panel first considered whether to take no action or make a caution order but concluded that this would be inappropriate in view of the seriousness of the conviction and the need to declare and uphold proper standards of conduct.

The panel next considered whether placing conditions of practice on Mrs Duncan's registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- 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 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. In any event, the matters giving rise to the conviction took place outside Mrs Duncan's working environment.

The panel concluded that the placing of conditions on Mrs Duncan's registration would not adequately address the seriousness of this case or satisfy the significant public interest concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a 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 determined that, a suspension order would not be sufficient to satisfy the significant public interest in this case. It noted that the facts behind the conviction are serious. The attack on the two victims was sustained and violent with Victim 2 sustaining a significant, potentially life threatening injury. The panel was of the view that Mrs Duncan's conviction has the potential to seriously damage public confidence in the profession and the NMC as the regulator. It noted that the nature of the conduct to which the charges relate is serious and fundamentally incompatible with the expectation that a reasonable member of the public would have of the standards expected of a registered nurse.

In these circumstances, the panel determined that a suspension order would not be sufficient, appropriate nor proportionate.

Finally, in looking at a striking-off order, the panel took note of the following from 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?

Mrs Duncan's conduct amounts to a significant departure from the standards expected of a registered nurse and raises serious questions about her professionalism. Such a serious departure from the standards expected is incompatible with her remaining on the register. The panel was of the view that the public interest in the case will only be served by a permanent removal from the NMC's register.

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 Mrs Duncan'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 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 and expected of a registered nurse.

Determination on Interim Order

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.