

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

Substantive Meeting

9 January 2020

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

Name of registrant:	Mr Gareth James Craig
NMC PIN:	09I0544S
Part(s) of the register:	Registered Nurse – sub part 1 Learning Disabilities Nursing (3 September 2012)
Area of Registered Address:	Scotland
Type of Case:	Conviction
Panel Members:	Timothy Cole (Chair, Lay member) Deborah Hall (Registrant member) Gregory Hammond (Lay member)
Legal Assessor:	Jonathan Whitfield
Panel Secretary:	Anjeli Shah
Facts proved:	1
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-Off Order
Interim Order:	Interim Suspension Order for 18 months

Details of charge:

That you, a registered nurse:

- 1. Were convicted on 3 May 2019 at Dundee Sheriff Court of theft.*

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

Decision on Service of Notice of Meeting:

Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (as amended) (“the Rules”) state:

‘11A.(1) Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise Committee shall send notice of the meeting to the registrant no 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 panel considered whether notice of this meeting has been served in accordance with the Rules.

Notice of this was substantive meeting was sent to Mr Craig’s registered address on 5 December 2019 by recorded delivery and first class post. The panel is satisfied that the notice was sent at least 28 days in advance of this meeting. The panel therefore finds that notice has been served in accordance with the Rules.

The panel also noted from the documentation before it that a Nursing and Midwifery Council (“NMC”) case officer had emailed Mr Craig on 11 November 2019 to enquire as to whether he had received paperwork sent to him previously. Furthermore, the NMC had instructed a tracing agent to find out where Mr Craig was residing, and had written to him at the address provided by that agent on 23 December 2019. This letter was sent by recorded delivery, and asked Mr Craig to confirm whether he did in fact reside at this address and, if so, for him to update his address held on the NMC register. Royal Mail Track and Trace confirmed that this letter was signed for in the name of ‘CRAIG’ on 27 December 2019.

The panel noted that there had been no communication from Mr Craig in relation to this meeting or in response to the enquiries as set out above.

The panel also noted that it is the responsibility of a registrant to maintain an effective and up to date registered address.

Background

Mr Craig entered on to the NMC register in September 2012.

Mr Craig began working as a Staff Nurse at Thistle Care Home (“Thistle”) in 2013. Whilst employed there, Mr Craig met Patient A, who was a resident at Munroe House (“Munroe”), which was part of Thistle.

Patient A managed his own finances, but due to his disability he was unable to use an ATM or pay for shopping. As a result, Patient A’s bank card and wallet were kept in the safe at Munroe and only removed when Patient A required them.

In September 2016 Patient A checked his account balance and realised that money was missing.

The police were contacted and, following an investigation, found that there were 31 cash withdrawals from Patient A’s account between 25 July and 30 August 2016 with a total of £7,390 withdrawn from the account.

Mr Craig was identified as the person with the opportunity to have made cash withdrawals without the knowledge of Patient A. The police obtained a warrant to access Mr Craig’s bank accounts, and found that there had been a total of £6,430 paid into Mr Craig’s account between 23 July and 31 August 2016, in five separate cash deposits.

Mr Craig was charged with theft. He appeared at Dundee Sheriff Court (“the Court”) on 3 May 2019 and was convicted of this offence.

On 5 June 2019 Mr Craig was sentenced to a community payback order with a supervision period of 36 months; 200 hours of unpaid work to be completed within 12 months; and £1,030 of compensation payable to Patient A.

Decision on the findings of facts and reasons

The charge concerns Mr Craig's conviction and, having been provided with a copy of the extract conviction report, the panel finds that the facts of charge 1 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 (s)he is not the person referred to in the certificate or extract.

Decision on impairment

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

The panel accepted the advice of the legal assessor.

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 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. 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 considered that all four limbs of Dame Janet Smith's test, as set out above, were engaged by Mr Craig's past actions.

The panel noted that Mr Craig made a large number of cash withdrawals, over a sustained period of time (between 25 July and 30 August 2016), from the bank account of a vulnerable person, Patient A, who had a learning disability, and to whom Mr Craig was responsible for providing care. As well as Mr Craig's actions putting Patient A at risk of harm, they caused actual harm as they involved the financial abuse of a vulnerable adult. The panel also considered that Mr Craig's behaviour would impact on the trust that Patient A would place in nurses caring for him.

The panel considered that Mr Craig's actions brought the reputation of the nursing profession into disrepute, as they would impact on the trust and confidence placed in nurses by patients, their families and members of the public. The panel considered that such a significant breach of trust by Mr Craig also breached fundamental tenets of the profession.

The panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015), and it considered that the following sections were breached by Mr Craig:

“17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

...

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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”
- 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
- ...
- 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

Furthermore, the panel considered that Mr Craig’s theft from Patient A was by its nature a dishonest act.

The panel went on to consider whether Mr Craig remained liable to act in a way which could put patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future. In doing so, the panel considered whether there was any evidence of remorse, insight and remediation.

The panel noted that theft and dishonesty are by their nature difficult to remediate, although not impossible, for example by providing evidence of reflection and insight into the behaviour. However, the panel noted that Mr Craig did not appear to have engaged at all with these proceedings. He had provided no evidence of remorse and he had not demonstrated any insight into his offence, nor the impact of his behaviour on Patient A,

members of the public and on the reputation of the nursing profession. The panel considered that there was no evidence to suggest that Mr Craig had undertaken any steps to remediate his offence.

In light of the lack of evidence of remorse, insight and remediation, the panel considered that a risk of repetition remains. It considered that Mr Craig did remain liable to act in a way which could put patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly in the future. The panel therefore determined 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 wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that Mr Craig has received a conviction for a serious criminal offence. It considered that Mr Craig's behaviour in stealing a large amount of money from Patient A would significantly undermine the trust that patients and members of the public place in nurses to provide safe care to vulnerable patients and to act with honesty and integrity at all times. The panel considered that public confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made. The panel therefore determined that a finding of impairment is also necessary on public interest grounds.

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

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 Mr Craig off the register. The effect of this order is that the NMC register will show that Mr Craig has been struck-off the register.

In reaching this decision, the panel has had regard to all the documentary evidence in this case. The panel accepted the advice of the legal assessor. The panel bore 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 first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- Mr Craig’s behaviour involved an abuse of his position of his trust with a vulnerable patient, with the motive of personal financial gain, and occurred within the context of his clinical practice;
- There was a pattern of behaviour as Mr Craig withdrew from Patient A’s bank account on a large number of occasions over a significant period of time;
- Mr Craig’s actions caused actual harm to Patient A; and
- Mr Craig has not demonstrated any remorse or insight into his behaviour.

Mitigating factors:

- The panel was unable to identify any mitigating factors in this case.

Prior to considering the sanctions available to it in ascending order, the panel had regard to the NMC’s guidance on considering sanctions for serious cases. The

guidance states that in general, a nurse or midwife should not be permitted to start practising again until they have completed their sentence for a serious offence, a principle established in the case of *CHRE v GDC and Fleischmann* [2005] EWHC 87 (QB). Although this is a general rule, it does not mean that the panel has no choice but to remove the nurse or midwife from the register permanently, as set out in the case of *Chandrasekera v NMC* [2009] EWHC 144 (Admin). The panel bore in mind that Mr Craig is currently serving an ongoing criminal sentence, namely a community payback order, with a supervision period of 36 months, imposed on 5 June 2019.

The panel also assessed Mr Craig's dishonesty, and graded how serious it was, having regard to the guidance referred to above. The panel considered that the following factors were apparent in Mr Craig's offence:

- misuse of power;
- vulnerable victim;
- personal financial gain from a breach of trust; and
- premeditated, systematic and longstanding deception.

Having regard to these factors, the panel considered that the dishonesty was at the higher end of the spectrum of seriousness. Taking the guidance into account, the panel noted that the dishonesty would call into question whether Mr Craig should be allowed to remain on the register.

The panel then went on to consider what action to take in this case.

The panel first considered whether to take no action but concluded that this would be wholly inappropriate in view of the seriousness of the criminal offence for which Mr Craig has been convicted. Mr Craig's behaviour involved a breach of trust of a vulnerable patient for whom he was supposed to be providing care. The panel decided that taking no action would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether a caution order would be appropriate in the circumstances. The panel took into account the SG, which states that a caution order may be appropriate where:

“...the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again.”

The panel considered that Mr Craig’s behaviour was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of Mr Craig’s criminal offence for which he had been convicted. Mr Craig’s behaviour involved a breach of trust of a vulnerable patient for whom was supposed to be providing care. The panel decided that imposing a caution order would not protect the public and it would not satisfy the wider public interest.

The panel next considered whether to impose a conditions of practice order. Having regard to the nature of Mr Craig’s behaviour, which involved acting dishonestly, the panel was of the view that no workable or practicable conditions could be formulated to address his offence and this type of behaviour and which would protect the public. Having regard to the serious nature of his conviction, the panel also considered that a conditions of practice order would fail to address the high public interest considerations of this case.

The panel went on to consider whether to impose a suspension order. It had regard to the SG, and considered that Mr Craig’s behaviour did not involve a one-off incident. The panel considered that, by the very nature of Mr Craig’s offence, there was evidence of harmful deep-seated attitudinal problems on his part. Mr Craig had not demonstrated insight into his behaviour, and the panel considered that there was a risk of repetition. In light of these factors, the panel did not consider that a suspension order would be sufficient to protect patients and public confidence in nurses and to uphold professional

standards. The panel concluded that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel then considered whether to impose a striking-off order. It considered that Mr Craig's theft from Patient A was an extremely serious, dishonest act, involving financial abuse of a vulnerable individual and a significant breach of trust. The panel considered that Mr Craig's behaviour raised fundamental questions about his professionalism. It considered that public confidence would not be maintained in nurses unless Mr Craig were to be removed from the register permanently. The panel considered that a striking-off order is the only sanction which would be sufficient to protect patients and members of the public and to maintain professional standards.

Balancing all of these factors and after taking into account all the documentary 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 Mr Craig's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, 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 nurse.

Determination on Interim Order

Under Article 31 of the Nursing and Midwifery Order 2001 (“the Order”), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant’s own interests.

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 Mr Craig is sent the decision of this hearing in writing.

That concludes this determination.