

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

**Substantive Meeting
25 November 2020**

Virtual meeting

Name of registrant:	Cherith Victoria Douglas
NMC PIN:	0710221N
Part(s) of the register:	Nursing -Sub part 1 RNA, Registered Nurse – Adult (14 March 2008)
Area of registered address:	Northern Ireland
Type of case:	Misconduct/Conviction
Panel members:	Tim Skelton (Chair, lay member) Kevin Hope (Registrant member) Sue Davie (Lay member)
Legal Assessor:	Robin Hay
Panel Secretary:	Rob James
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

At the outset of the meeting, the panel was provided with the case papers relating only to the misconduct allegations. The panel was not at that stage informed that it was to consider also conviction allegations. The panel therefore first considered the misconduct allegations.

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Douglas' registered email address on 16 October 2020.

The panel took into account that the Notice of Meeting provided details of the allegation and confirmation that the case would be heard on or after 23 November 2020.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Douglas 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 charges (as amended)

That you, registered nurse:

1. On 15 November 2017 took a debit card belonging to another without permission;
2. On the following dates used a debit card belonging to another without permission:
 - a. 15 November 2017;
 - b. 15 November 2017 on an occasion other than in charge 2a;
 - c. 18 November 2017.
3. Your actions at charges 1 & 2 above were dishonest as you knew you were not entitled to take and/or use another's debit card without permission but did so anyway.

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

Amendment to charge

The panel, of its own volition, made an amendment to charges 1, 2 and 3. In making this amendment, the panel had regard to the certificate of conviction within the NMC misconduct bundle which indicated that Mrs Douglas was made subject to an absolute discharge. The certificate of conviction stated that the allegation related to a stolen “*debit*” card rather than a stolen “*credit*” card as referred to in the charge. The panel therefore, having heard the advice of the legal assessor, decided that any reference to “credit card” in the charge should be amended to state “*debit card*”.

For avoidance of doubt, the original charges reads as follows:

That you, [a] registered nurse:

1. On 15 November 2017 took a credit card belonging to another without permission;
2. On the following dates used a credit card belonging to another without permission:
 - a. 15 November 2017;
 - b. 15 November 2017 on an occasion other than in charge 2a;
 - c. 18 November 2017.
3. Your actions at charges 1 & 2 above were dishonest as you knew you were not entitled to take and/or use another’s credit card without permission but did so anyway.

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

The amended charges reads as follows:

That you, [a] registered nurse:

1. On 15 November 2017 took a debit card belonging to another without permission;
2. On the following dates used a debit card belonging to another without permission:
 - a. 15 November 2017;
 - b. 15 November 2017 on an occasion other than in charge 2a;
 - c. 18 November 2017.
3. Your actions at charges 1 & 2 above were dishonest as you knew you were not entitled to take and/or use another's debit card without permission but did so anyway.

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

The panel determined that this amendment was necessary as it reflected the evidence before it more accurately. Further, the amendment did not prejudice either Mrs Douglas or the NMC.

Decision and reasons on facts

Background

Mrs Douglas entered the NMC register of nurses on 14 March 2008, as a Registered Nurse. She was referred to the NMC on the 8 November 2018. The investigation was opened in accordance with Article 22 (6) of the Nursing and Midwifery Order 2001.

The theft of a debit card took place in a private home on the 15 November 2017. Mrs Douglas stole a debit card whilst she was babysitting. Mrs Douglas, on the same date, then used the debit card to spend £4.99 at a Mc Donald's Restaurant and at Toymaster to

pay £30 off her own store account. Mrs Douglas was then seen on CCTV at Tesco Petrol Store to pay for £30 of fuel with the stolen debit card.

The police subsequently undertook an investigation. Mrs Douglas was interviewed by the Police and denied all of the offences. She denied stealing the card and stated that she had worked until 14:00 on the 15 November 2017 and therefore could not have made the transactions. The parent of the children she had been babysitting provided a copy of her diary to show that she had no client appointments after 11.45 on 15 November 2017. Therefore, Mrs Douglas was free to leave their home from 11.45. In her police interview, Mrs Douglas admitted that the female in the CCTV, on 15 November 2017 at the Tesco garage was her. However, denied stealing the debit card.

Mrs Douglas was charged with one count of Theft contrary to the Theft Act (Northern Ireland) 1969 and three counts of dishonesty making a False Representation, contrary to section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

Mrs Douglas attended the Magistrates Court on 11 July 2018 and pleaded guilty to all of the charges. On the 15 August 2018 the Court ordered an Absolute Discharge and ordered her to pay compensation.

Before making any findings on the facts, the panel accepted the advice of the legal assessor.

At the outset of the meeting, the panel noted the email dated 27 July 2020 from Mrs Douglas to the NMC Case Coordinator. In this email, Mrs Douglas stated: "*The charges laid out I agree too (sic)*". The panel regarded this statement as a full admission to the misconduct charges.

The panel therefore finds all misconduct charges proved in their entirety, by way of Mrs Douglas' admissions.

Misconduct

Having reached its determination on the facts of this case, the panel then considered, whether the facts found proved amount to misconduct. 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.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

The panel was prepared to adopt a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Douglas' fitness to practise is currently impaired as a result of that misconduct.

Representations on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

The NMC invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' ("the Code") in making its decision.

In the statement of case, the NMC identified the specific, relevant standards where registrant's actions amounted to misconduct and why this was the case.

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs Douglas' actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Douglas' actions amounted to a breach of the Code. Specifically:

20: Uphold the reputation of your profession at all times.

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

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, midwives and nursing associates to aspire to

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Douglas' actions were a breach of the fundamental tenets relating to nursing with particular reference to trust and integrity. Further, the panel considered that Mrs Douglas' actions were serious and have the potential to damage the reputation of the nursing profession. The panel therefore found that Mrs Douglas' actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Introduction of new charges

Following its finding on misconduct on the original charges, the panel was provided with further documents (the conviction bundle) that related to the following conviction charges:

Conviction Charges (as amended)

That you, a registered nurse.

1. Were tried and convicted on 19/9/2018 of stealing a Halifax debit card contrary to Section 1 of the Theft Act 1969.

2. Were tried and convicted on 19/9/2018 of dishonestly making a false representation, namely used a stolen Halifax card, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

3. Were tried and convicted on 19/9/2018 of dishonestly making a false representation, namely used a stolen Halifax card, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

4. Were tried and convicted on 19/9/2018 of dishonestly making a false representation, namely used a stolen Halifax card, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

5. Were convicted on 17/7/2019 of stealing groceries to the value of £8.85 or thereabouts contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

And in light of the above your fitness to practise is impaired by reason of your convictions as set out in charges 1 to 5.

Amendment to charge

The panel of its own volition, made a consideration in relation to an amendment of charge 5. It noted that charge 5 stated that Mrs Douglas was convicted on 13 July 2019. However, upon inspection of the “certificate of order/conviction” the date was stated as 17 July 2019. The panel therefore determined that the charge should be amended from:

5. Were convicted on 13/7/2019 of stealing groceries to the value of £8.85 or thereabouts contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

To:

5. Were convicted on 17/7/2019 of stealing groceries to the value of £8.85 or thereabouts contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

Having accepted the advice of the legal assessor, the panel was of the view that this amendment more accurately reflected the evidence before it and did not present prejudice towards either Mrs Douglas or the NMC.

Service of notice in relation to conviction

The panel was satisfied that in relation to the documentation before it, service of notice had been effected in accordance with the rules.

Background

On the 14 October 2017 the police were called by an aggrieved member of the public. The aggrieved's bank card had been stolen on the 14 October 2017 at the self-serve till at a Tesco store. Three transactions had been made on the 14 October 2017 at three different locations. Mrs Douglas was identified on CCTV. During her police interview she answered no comment to all questions put to her by the police officer.

On 22 August 2018 Mrs Douglas attended the Magistrates Court and pleaded not guilty. On 19 September 2018 Mrs Douglas attended the Magistrates Court and was convicted of three counts of Fraud contrary to Section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006 and one count of Section 1 of the Theft Act (Northern Ireland) 1969. She was convicted and sentenced to four months' imprisonment.

On 10 January 2019 Mrs Douglas appealed her four months sentence of imprisonment and it was varied to a combination order: community service order for 100 hours and a probation order for two years. Mrs Douglas was also ordered to pay compensation.

On the 20 August 2018 the police received a report that a member of the public suspected that Mrs Douglas, an ex-employee had been stealing items from his property.

Mrs Douglas denied the allegation during her police interview. On the 17 July 2019 the Registrant attended Craigavon Magistrates and was convicted of one count of Theft contrary to Section 1 of the Theft Act (Northern Ireland) 1969. This offence related to stealing groceries of around £8.85 on the 17 July 2019. She was sentenced to nine months' imprisonment suspended for two years.

Finding on conviction charges

The charges concern Mrs Douglas's convictions and, having been provided with a copy of the certificates 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 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 found the convictions were evident by the true certificates and the charges are therefore proved.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and convictions, Mrs Douglas' 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 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 took account of the fact that Mrs Douglas' actions during her misconduct and those that amounted to her convictions did not take place while she was practising as a nurse. For this reason, it was of the view that her actions therefore did not put the patients in her care at risk of unwarranted harm. However, the panel considered that Mrs Douglas' actions brought the profession into disrepute. The charges found proved individually and collectively were serious, breaching fundamental tenets of the profession, particularly with regard to her repeated acts of dishonesty and her lack of integrity.

Regarding insight, the panel considered that Mrs Douglas has attempted to articulate why she took the actions that led to her referrals to the NMC. In an email to the NMC Case Coordinator dated 18 May 2020 she stated:

"I am more than aware that my actions were unacceptable and they never should have happened however I have had to face up to them and have dealt with the consequences.

...

From the start I took responsibility for my actions and the consequences it had however it still does not excuse my actions. Mentally I will never fully forgive myself for my actions but I have learnt to deal with them and know that that is not the person I really am."

The panel noted that Mrs Douglas has acknowledged some of her shortcomings and has appeared to have taken some time to reflect on her actions. However, it was of the view

that she has not taken into account the full impact of her actions on the nursing profession and had failed to articulate why her behaviour would not be repeated. The panel determined that the level of insight demonstrated by Mrs Douglas was limited and that further, more focused, reflection would be necessary to show that her repeated acts of dishonesty had been considered properly and fully addressed.

The panel noted that dishonesty is typically difficult to remediate and that the repeated nature of events dictates that a risk of repetition remains. The dishonesty demonstrated by Mrs Douglas was sustained and took place over a significant period of time.

The panel took account of the fact that Mrs Douglas's dishonest actions did not occur when she was practising as a registered nurse. However, it was of the view that her limited insight into her actions suggests that, were she permitted to practise as a registered nurse, her dishonesty may transfer to a clinical setting thus potentially causing harm to patients in her care.

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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and 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 a finding of impairment on public interest grounds is also required. It was of the view that a member of the public would be concerned if a finding of impairment was not made following Mrs Douglas' multiple convictions for theft. The panel was of the view that the seriousness of Mrs Douglas' actions need to be marked.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Douglas' fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Douglas' fitness to practise is currently impaired on both the grounds of public protection and public interest.

Sanction

The panel has decided to make a striking-off order. It directs the registrar to strike Mrs Douglas off the register. The effect of this order is that the NMC register will show that Mrs Douglas 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.

Having found Mrs Douglas' 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:

- Mrs Douglas' actions were a repeated pattern of dishonesty over a period of time;
- Mrs Douglas achieved personal financial gain from her actions;
- Mrs Douglas initially denied many of her actions;
- Mrs Douglas' actions were an abuse of a position of trust.

The panel also took into account the following mitigating features:

- Mrs Douglas, at a later stage, pleaded guilty to some of the offences;
- Mrs Douglas admitted the NMC misconduct charges;
- Mrs Douglas was experiencing challenging personal circumstances at the time of the allegations.

In making its decision the panel also had regard to the NMC guidance entitled “Considering sanctions for serious cases” and in particular the subsection entitled “Cases involving dishonesty” and “cases involving criminal convictions”. The panel noted that Mrs Douglas’ actions were not one-off incidents and were not opportunistic or spontaneous. Further, Mrs Douglas had direct personal gain from her actions. The panel therefore concluded that Mrs Douglas’ dishonesty was at the higher end of seriousness.

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. Misconduct and convictions of this nature demands a sanction.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Douglas’ 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 Douglas’ misconduct and conviction were 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 Douglas’ registration would be a sufficient and appropriate response. There are no practical or workable conditions that could be formulated, given the nature of the charges in this case which occurred outside of a clinical environment. The misconduct and convictions identified in this case were not something that can be addressed through retraining.

Furthermore, the panel concluded that the placing of conditions on Mrs Douglas’ registration would not adequately address the seriousness of this case and would not protect the public.

Moreover, the panel was also alive to the case of Council for the regulation of healthcare professionals v (1) General Dental Council and (2) Fleischmann (2005) EWHC 87 (qb) which, at paragraph 54 states:

I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence.

Only circumstances which plainly justify a different course should permit otherwise. Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for the payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.'

The panel noted that Mrs Douglas is subject to a suspended sentence that does not expire until 18 July 2021.

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 conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. There were multiple incidences over an extended period of time and Mrs Douglas has demonstrated minimal insight into her actions which demonstrated a worrying pattern of deception. Multiple convictions and repeated dishonesty demonstrate attitudinal problems. The panel considers there to be a

risk of repetition of her actions which have the potential to negatively affect the reputation of the nursing profession.

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?*

Mrs Douglas' 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 Douglas' 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 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 Douglas' 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 this would be sufficient in this case.

The panel determined that this order was also 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.

This will be confirmed to Mrs Douglas 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 Douglas' own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

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 which would protect the public during the 28 day appeal period.

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

That concludes this determination.