

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

**Substantive Meeting
13 January 2021**

Virtual meeting

Name of registrant:	Ember Hiceta
NMC PIN:	03Y0007O
Part(s) of the register:	Registered Nurse – Adult (February 2003)
Area of registered address:	England
Type of case:	Misconduct/Conviction
Panel members:	Adrian Ward (Chair, lay member) Sandra Lamb (Registrant member) Michael Glickman (Lay member)
Legal Assessor:	Maria Clarke
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.

Following advice from the legal assessor, the panel determined that it was able to put any information relating to the conviction charge, as included in the misconduct bundle, out of its mind when considering misconduct.

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 Miss Hiceta's registered email address on 30 November 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 4 January 2021.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Hiceta 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

That you, a registered nurse,

1. On the 29th August 2018 breached professional boundaries by accepting a loan from Mrs A, a resident's partner.

In light of the above your fitness to practice is impaired by reason of your misconduct

Decision and reasons on facts

Background (as adapted from the statement of case)

Miss Hiceta is a qualified nurse and came onto the NMC Register in 2003. She started her employment with Bridgehouse Care Home (“the Home”) in May 2013 and was employed by the Home when there was a concern that she had breached professional boundaries by borrowing money from a resident’s partner. Miss Hiceta was suspended from her employment on 12 October 2018.

The Home was investigating another regulatory concern which was referred to Thames Valley Police. As part of the investigation, Miss Hiceta was invited to a meeting at the Home on the 19 October 2018. During that meeting Miss Hiceta was asked whether she was willing to provide her bank statement. Miss Hiceta agreed and provided a printed copy of her bank statement to the Director of Nursing of the Home. The bank statement revealed transactions between Miss Hiceta and another resident’s relative and this had not been declared to the company.

The matter that was referred to Thames Valley Police was referred to the NMC, by the police, on the 18 October 2018. This resulted in the NMC contacting the Home, which resulted in the NMC receiving information about the regulatory concern regarding a breach of professional boundaries.

The NMC invited Miss Hiceta to respond to the regulatory concern and she sent in her ‘Regulatory Concerns Response Form’ (‘RCRF’) dated 2 April 2019. As part of that RCRF Miss Hiceta included a copy of a loan agreement between her and the resident’s partner. Within the RCRF Miss Hiceta accepts that she did in fact accept a loan from a resident’s partner on the basis that they had become friends and that she offered to help Miss Hiceta.

The NMC having received the RCRF and the loan agreement contacted the resident’s partner by letter and this resulted in the resident’s partner contacting the NMC by

telephone on the 20 May 2019. It was accepted in that telephone call that she did in fact provide a loan to Miss Hiceta as a friend.

The aspect of their friendship is confirmed within the character reference provided to the NMC dated 29 October 2018 in which she states that both her and Miss Hiceta have become good friends “*outside the confines of her professional position*”. The NMC received this reference as a result of a telephone conversation that they had with Miss Hiceta, dated 26 October 2018. Within that telephone call Miss Hiceta accepted that she had received a loan for £500 and had paid the patient’s relative back. (The panel had sight of a loan agreement for the sum of £3000.)

Miss Hiceta to date has engaged with the NMC investigation and process, providing a number of written responses. Miss Hiceta denied accepting a loan when questioned by her employer but has subsequently accepted the regulatory concern in her latest RCRF received on 28 July 2020.

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 Case Management Form (CMF) dated 16 October 2020 as included in the NMC bundle. Within this form, Miss Hiceta ticked the box that asked if she admitted to charge 1. The panel regarded this as a full admission to the misconduct charge.

The panel therefore finds this charge proved in its entirety, by way of Miss Hiceta’s admissions.

Misconduct and impairment

Having reached its determination on the facts of this case, the panel then considered, whether the facts found proved amount to misconduct and, if so, whether Miss Hiceta’s fitness to practise is impaired by this misconduct.

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, Miss Hiceta's 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 Miss Hiceta's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment

21.2 never ask for or accept loans from anyone in your care or anyone close to them

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 Miss Hiceta's actions were a clear breach of the Code and the way a registered nurse should act. Her behaviour was unprofessional and crossed an ethical boundary. The panel therefore found that Miss Hiceta's actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel also noted that Miss Hiceta admitted on the CMF that her actions 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

That you a registered nurse were;

1. Convicted on the 4th February 2020 in the Magistrates Court of three (3) offences of “dishonestly make false representation to make gain for self/another or cause loss to other/expose other to risk.”

In light of the above your fitness to practise is impaired by reason of your convictions

Background (as adapted from the statement of case)

The NMC received a referral about Miss Hiceta’s fitness to practise on 18 October 2018, which was made by Thames Valley Police.

Miss Hiceta having pleaded guilty to the three offences on 4 February 2020, was sentenced on 27 February 2020 at Oxford Crown Court for all three offences to a concurrent 12-month Community Order with the following requirements attached:

- (a) To complete 100 hours of unpaid work in the community.
- (b) To undertake a Rehabilitation Activity Requirement for five (5) days.
- (c) To pay a victim surcharge fee of £85.00, with a Collection Order imposed.

Miss Hiceta was working in the Home as a Registered Nurse in charge of the ground floor looking after residents suffering with dementia. Miss Hiceta used a contactless

debit card belonging to one of the residents, who suffers with dementia, and made several transactions without the consent of the resident.

Matters came to light on 7 October 2018 when the daughter of the resident checked her mother's online bank account and discovered that suspicious transactions had been made using her mother's debit card. She attended the Home on 8, 9 and 10 October 2018 and discovered that the debit card was missing. As a result, the daughter contacted the Royal Bank of Scotland on 11 October and the bank put a stop on the card.

On 11 October 2018 the daughter attended the Home and spoke with the manager reporting that she suspected that a member of staff had been using the card. The daughter showed the manager the transactions and it was noted that a transaction had been made that morning at 07.17 hours. This resulted in the daughter and the manager attending the local Spar in Abingdon on 12 October. They showed a member of staff the transaction and as such the manager of the Spar agreed to allow the daughter and the manager to view the CCTV.

Upon the manager of the Home and the daughter viewing the CCTV, they both immediately recognised Miss Hiceta in the Spar at the time of 07.17 hours when the transaction was made. The CCTV showed Miss Hiceta take a card from her bag and tap it on the card reader to pay for shopping.

The three transactions recorded and relating to the charges are as follows:

- (a) 6 October 2018 at SAVERS in Abingdon to the value of £18.92.
- (b) 6 October 2018 at Spar in Abingdon to the value of £20.22.
- (c) 7 October 2018 at Spar in Abingdon to the value of £25.53.

The matter was reported to the police and Miss Hiceta was arrested on 12 October 2018. When interviewed by the Police under caution Miss Hiceta denied taking the resident's bank card and using it for herself. She stated that she did use those shops but used her own bank card to make purchases and that if the police checked with her

bank it would show this. Miss Hiceta denied that she had ever touched the resident's bank card.

Miss Hiceta was interviewed under caution again by the police on 17 January 2019. The CCTV was shown to her but she maintained her original account suggesting that she must have a twin/doppelganger in the Abingdon area.

Miss Hiceta appeared before the Oxford Magistrates Court on 4 February 2020, pleaded guilty to the three offences and the case was committed to the Oxford Crown Court for sentence (as highlighted above).

Miss Hiceta accepted, in court, that she had committed a crime against a vulnerable person, describing her embarrassment and shame. Miss Hiceta further accepted that she destroyed the trust and confidence that people have entrusted her with to safeguard loved ones. Miss Hiceta expressed regret, remorse and an appreciation of what she had done. The Judge took all these factors into account but ultimately stated that:

“This is about the betrayal of that trust and that is what makes it serious”

The Judge was of the opinion that the offending crossed the custody threshold, indicating that this was an offence against a *“vulnerable person, which many would say deserves an immediate custodial sentence”*. However, the Judge took the view that although Miss Hiceta should to be punished, they did not consider it appropriate to impose a custodial sentence. The Judge followed the recommendation of the pre-sentence report and imposed the sentence as outlined above.

Finding on conviction charges

The charges concern Miss Hiceta's convictions and, having been 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). 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 certificate and the charges are therefore proved.

Decision and reasons on impairment

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 next went on to decide if as a result of the misconduct and conviction, Miss Hiceta'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 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.'*

In relation to impairment, the panel considered the issues of misconduct and conviction holistically. The panel was mindful that, in relation to impairment, it should consider both circumstances at the time of the incident and at the present date. The panel had

regard to the case of R (Nakash) V Metropolitan Police Service & General Medical Council (Interested Party) [2014] EWHC 3810 (Admin) at paragraph 36.

The panel considered that Miss Hiceta's actions, in accepting a loan from a resident's relative, had the potential to put a patient or patients at unwarranted risk of harm. This is due to the fact that after accepting the loan, Miss Hiceta may have acted preferentially to the relative of Mrs A, who was in her care. Further, the panel considered that these actions brought the nursing profession into disrepute and breached a fundamental tenet of the profession.

The panel considered Miss Hiceta to be lacking insight into her misconduct. In a letter dated 17 March 2020 to the NMC, Miss Hiceta stated:

“There is no excuse for my grave misconduct against my ethics and principles as a nurse and I deeply regret the fact that I have allowed my personal circumstances to overrule my professionalism and my better judgement. I can't change what happened but I bear the consequences of my actions daily and until now I felt embarrassed and ashamed of myself. I'm not a bad person and my action had served me a life lesson as I had lost the trust and confidence of the people who I did care for and it breaks my heart.”

The panel noted Miss Hiceta's comments and took account of the fact that she has shown remorse for her actions. However, it was of the view that most of the remorse demonstrated is focused on the effect that it has had on herself and not the patients in her care, her colleagues or the nursing profession as a whole.

The panel was of the view that Miss Hiceta appears to not understand completely what she should be remorseful for. She states that she regrets her actions but the reasons for her remorse are not explicit or clear.

In terms of remediation, the panel considered that Miss Hiceta has failed to provide any assurances that she would not breach professional boundaries in the future. She has provided certificates relating to completed courses but these are not relevant to the

misconduct and so do not amount to remediation. The panel had similar regard to the references provided which opine that Miss Hiceta is a good nurse but do not comment on her standing as a person who demonstrates integrity at all times and as someone who understands professional boundaries.

The panel was of the view that there is a risk of repetition based on the fact that Miss Hiceta undertook very similar actions in relation to the conviction charge which happened only a short time after the events leading to the misconduct charge. It could not be sure that there was no risk of Miss Hiceta putting patients in her care at risk of harm in the future for her financial benefit. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In relation to the conviction charge, the panel had regard to the Grant test and determined that Miss Hiceta's actions engaged all four limbs. Her improper use of a resident's card, who was vulnerable, put that patient at risk of psychological and financial harm. Miss Hiceta's actions brought the profession into disrepute, breached a fundamental tenet of nursing and were dishonest.

In considering Miss Hiceta's insight into the actions that led to her conviction, the panel had regard to the Judge's sentencing remarks during which he remarked upon Miss Hiceta's "*embarrassment and shame*" and her acknowledgement that her actions had "*destroyed the trust and confidence of people who have entrusted you to save their loved ones*". He told Miss Hiceta that her actions crossed the threshold of a custodial sentence but that he had spared her that due to her remorse and the fact that she could be useful in society.

It was apparent to the panel that to make that decision the Judge would have been impressed with Miss Hiceta's reasoning and conduct while at Court. The panel was aware that its findings are based on a different standard than that of civil court and was of the view that there was nothing before it that could help it decide that her insight was at a level where it could be considered that it had developed. Although Miss Hiceta appears to be remorseful and regretful of her actions, there appears to be a lack of understanding into the effect that her actions may have had on the resident in question,

her colleagues, the Home and on public perception of the profession. Further, Miss Hiceta does not appear to be able to articulate how she would avoid repetition of her actions in the future.

The panel noted that Miss Hiceta has taken no steps to remediate the actions that led to her conviction and does not appear to have paid back the money she removed from the resident's account.

The panel was of the view that it is to Miss Hiceta's credit that she has completed the majority of her sentence and community work. However, the strong link to the misconduct found suggests that this offence was not an isolated incident and that a risk of repetition remains. The panel therefore concluded that Miss Hiceta's fitness to practise is currently impaired in relation to her conviction.

In relation to both the misconduct and conviction, 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 Miss Hiceta's conviction. The panel was of the view that the seriousness of Miss Hiceta's 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 Miss Hiceta's fitness to practise impaired on the grounds of public interest.

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

Decision and reasons on sanction

Having found Miss Hiceta's 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 Sanctions Guidance ("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:

- The debit card that was misused belonged to a vulnerable resident;
- Miss Hiceta originally denied both charges;
- Miss Hiceta's actions involved repeated unauthorised use of a debit card;
- Miss Hiceta's actions resulted in personal financial gain;
- Miss Hiceta was in a position of trust.

The panel also took into account the following mitigating features:

- Miss Hiceta has demonstrated early development of insight;
- There is evidence before the panel that Miss Hiceta is a competent nurse;
- Miss Hiceta has completed her community order.

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, and the public protection issues identified, an order that does not restrict Miss Hiceta's 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 Miss Hiceta's misconduct was 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 Miss Hiceta's 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 misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Hiceta's registration would not adequately address the seriousness of this case and would not protect the public, having had particular regard to the similarity of the offences and clear repetition that took place.

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 was of the view that attitudinal problems were clearly exhibited by Miss Hiceta's actions and that the actions that led to her conviction suggested a tendency to repetition. The panel considered Miss Hiceta's insight as being only at an early stage of development and was of the view that she had not taken into account proper consideration of the effect that her actions had on the residents in her care, their relatives, her colleagues or the nursing profession as a whole.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Hiceta's actions is fundamentally incompatible with her 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?*

Miss Hiceta's 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 Miss Hiceta's actions were serious and 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 Miss Hiceta'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 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.

This will be confirmed to Miss Hiceta 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 Miss Hiceta's 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 Miss Hiceta is sent the decision of this hearing in writing.

That concludes this determination.

