

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

**Substantive Meeting
Wednesday, 3 March 2021 – Thursday, 4 March 2021**

Virtual Meeting

Name of registrant:	Mrs Nicola Bevan
NMC PIN:	14B0136W
Part(s) of the register:	Registered Nurse – Sub-part 1 Mental Health Nursing – 3 April 2014
Area of registered address:	Wales
Type of case:	Conviction
Panel members:	Raymond Marley (Chair, Lay member) Donna Hart (Registrant member) Robert Cawley (Lay member)
Legal Assessor:	Mark McEvoy
Panel Secretary:	Philip Austin
Consensual Panel Determination:	Accepted
Facts proved:	All charges
Fitness to practise:	Currently Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Meeting

The panel received information and advice from the legal assessor concerning service of the notice of meeting.

The notice of meeting was sent by the Nursing and Midwifery Council's ("NMC") case officer in a secure and encrypted fashion to the email address of Mrs Bevan on the NMC register as of 27 January 2021. The notice of meeting was also sent to Mrs Bevan's representative at the Royal College of Nursing ("RCN") on the same day. The panel noted that the emergency statutory instrument in place allows for electronic service of the notice of meeting to be deemed reasonable in the current circumstances, involving COVID-19.

The panel was aware that as this matter is being considered at a meeting, Mrs Bevan would not be able to attend. However, Mrs Bevan had been sent all of the evidence relating to this matter, and was informed that this meeting would take place on or after 3 March 2021. Mrs Bevan was also asked to provide comment no later than 25 February 2021, if she had anything that she wanted the panel to take account of in considering this matter. The panel noted that the RCN has been engaging with the NMC since the notice of meeting was sent and have not raised any issues with it considering this matter today.

In taking account of the above, the panel was of the view that this case could be properly dealt with by way of a meeting. Mrs Bevan and her representative appeared content for this matter to be dealt with by way of a meeting. A Consensual Panel Determination ("CPD") agreement had been reached between Mrs Bevan and the NMC which the panel was being invited to consider.

Therefore, the panel was satisfied that referring this matter to a hearing would not serve any useful purpose. It determined that Mrs Bevan would be unlikely to attend a hearing in any event. The panel was of the view that it had all the information necessary before it to reach a decision on this matter today. It decided that it would be able to consider this matter solely based on the documentary evidence it had received.

The panel noted that the notice of meeting had been served on 27 January 2021, which was more than 28 days before this meeting. The panel was satisfied that there was good service of the notice of meeting in accordance with Rules 11A and 34 of the Fitness to Practise Rules 2004 (as amended) (“the Rules”).

Details of charge

That you, a registered nurse

- 1) *On 23 July 2019, at Cardiff Magistrates Court, were convicted of dishonestly failing to disclose information to make a gain for self / another or cause / expose other to a loss, contrary to sections 1 and 3 of the Fraud Act 2006.*

- 2) *On 13 September 2019, in the Crown Court at Cardiff, were convicted of 2 offences of fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006.*

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

Consensual Panel Determination

At the outset of this meeting, the panel was made aware that a provisional CPD agreement had been reached between the NMC and Mrs Bevan.

The agreement, which was put before the panel, sets out Mrs Bevan’s full admissions to the facts alleged in the charges, and that her fitness to practise is currently impaired by

reason of her convictions. It is further stated in the agreement that an appropriate sanction in this case would be a striking-off order.

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

That provisional CPD agreement, as presented to the panel, reads as follows:

“Fitness to Practise Committee

Consensual panel determination: provisional agreement

The Nursing and Midwifery Council and Mrs Nicola Bevan, PIN 14B0136W (“the parties”) agree as follows:

1. *Mrs Bevan admits the following charges;*

That you, a registered nurse

1. *On 23 July 2019, at Cardiff Magistrates Court, were convicted of dishonestly failing to disclose information to make a gain for self / another or cause / expose other to a loss, contrary to sections 1 and 3 of the Fraud Act 2006.*
2. *On 13 September 2019, in the Crown Court at Cardiff, were convicted of 2 offences of fraud by false representation, contrary to sections 1 and 2 of the Fraud Act 2006.*

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

Facts

3. *The parties agree that the facts detailed below accurately reflect the charges.*
4. *The registrant appears on the NMC register as RNMH, Registered Nurse – Mental Health. She qualified in 2014. She has on previous warning issued by the case examiners on 21 December 2018 (case reference 059447/2017). The concerns investigated in that referral were that the registrant had been convicted of cultivation of cannabis and possession of cannabis receiving a suspended sentence on 3 September 2018.*
5. *The facts of the charges took place whilst the registrant was on bail for the drugs case.*
6. *Between 21 December 2016 and 8 June 2017 the registrant was employed by Abertawe Bro Morgannwg University Health Board (ABM UHB) but was on sick leave and in receipt of sick pay. At the same time the registrant was performing cosmetic procedures for her own business. She failed to declare this employment to ABMUHB. At the same time the registrant falsely represented to two pharmaceutical companies that independent prescribers had authorised submission of private prescriptions for Botox related medicine.*
7. *The prescription frauds came to light during the NHS Counter Fraud investigation in to the registrants sick pay claim.*
8. *Following a criminal investigation the registrant was charged and then convicted by her own admission to the following offences;*
 - i. *Dishonestly fail to disclose information to make a gain for self / another or cause / expose other to a loss, Contrary to sections 1 and 3 of the Fraud Act 2006. (convicted on 23 July 2019)*

ii) *Fraud by false representation, Contrary to sections 1 and 2 of the Fraud Act 2006 (convicted on 13 September 2019)*

iii) *Fraud by false representation, Contrary to sections 1 and 2 of the Fraud Act 2006 (convicted on 13 September 2019)*

9. *The registrant was sentenced for all matters on 3 October 2019 at the Crown Court sitting at Cardiff. She received 15 months imprisonment suspended for 18 months with a requirement to undertake 200 hours of unpaid work.*

10. *The safety of the registrant's client's played a significant part of the sentencing exercise and assessment of seriousness of the registrant's behaviour and is shown by the judges sentencing remarks below;*

"That is an absolutely foolhardy way of acting when you have such, firstly, the qualifications to do something worthwhile in the community and secondly, your responsibility for your son. But while you were on bail for those offences, you compound matters by starting to lie to your employers and then, having set up this business, which no doubt could be profitable and supplement your income, but to then, as a nurse, to disregard what seems to me the most fundamental issue and that is the health and safety for your customers using these repeat prescriptions without the correct medical assessments taking place. And it went on for some time and that is why the conclusion is that, in relation to all matters that you in fact have committed offences of such seriousness that they cross the custodial line. "

Impairment

1. *Current impairment is not defined in the Nursing and Midwifery Order 2001 or The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI2004/1761). The question of current impairment is often approached by addressing the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):*

“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

(i) has in the past, and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;

(ii) has in the past, and/or is she liable in the future to bring the professions into disrepute;

(iii) has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the professions;

(iv) has in the past, and/or is she liable in the future to act dishonestly.”

Also said when considering impairment

“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”

2. *It is agreed that the registrant’s behaviour has engaged all four limbs of Grant above.*

3. *The registrant has in the past placed clients of her aesthetics business at risk of unwarranted harm as identified by the sentencing Judge.*
4. *By placing her clients at unwarranted risk of harm she had brought the profession into disrepute and breached a fundamental tenet of the nursing profession.*
5. *By engaging in criminal conduct which was so serious it resulted in a suspended custodial sentence the registrant has brought the profession into disrepute by undermining public confidence in the profession and professional standards.*
6. *The convictions are for offences which are inherently dishonest and were repeated of a period of time.*
7. *Impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*
8. *It is agreed that the dishonesty in this case is at the higher end of the spectrum. This is because it was linked to clinical practice and placed members of the public at risk of harm for personal gain. Dishonesty of this nature is not easily remediable. As there is no evidence of remediation there remains a risk that similar behaviour would be repeated in the future and members of the public would be placed at risk of harm. A finding of impairment is therefore required to address this risk and protect the public.*
9. *It is agreed that dishonesty in the context of clinical practice which places the public at risk of harm for personal gain is unacceptable behavior for a registered nurse. A finding of impairment is therefore necessary to mark the behavior as unacceptable so that public confidence in the profession and professional standards is maintained.*

Sanction

1. *Having considered the NMC sanction guidelines published on line it is agreed that the appropriate sanction in this case is a Striking off Order.*

2. *It is agreed that the following aggravating features are present;*
 - i. *Repeated acts of dishonesty*
 - ii. *Previous warning issued for criminal convictions*
 - iii. *Conviction resulted in a suspended sentence of imprisonment*
 - iv. *Members of public placed at risk of harm for personal gain*

3. *It is agreed between the parties that the following mitigating features are present;*
 - i. *Registrant has admitted charges and impairment*

4. *The public interest must be at the forefront of any decision on sanction. The public interest includes protection of members of the public, including patients, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession.*

5. *Any sanction imposed must do no more than is necessary to meet the public interest and must be balanced against the registrant's right to practice in her chosen career.*

6. *It is agreed that taking no further action would not protect the public as the panel would in effect be taking no action. It is also agreed that this sanction would not reflect the seriousness of the charges and therefore public confidence in the profession and proper professional standards would not be maintained.*

7. *It is agreed that a caution order would not protect the public as no restrictions would be placed on the registrants practice. It is also agreed that this sanction would not reflect the seriousness of the charges and therefor public confidence in the profession and proper professional standards would not be maintained. It is agreed that this case is not at the lower end of the spectrum of impaired fitness to practice where a caution order may be appropriate.*
8. *It is agreed that the repeated acts of dishonesty suggest a deep seated attitudinal problem such that a Conditions of Practice Order would be inappropriate and the public could not be adequately protected. It is also agreed that this sanction would not reflect the seriousness of the charges and therefor public confidence in the profession and proper professional standards would not be maintained.*
9. *The behaviour for which the registrant was convicted cannot be said to be a single incident and also suggest a deep seated attitudinal problem. It is therefore agreed that, whilst the public could be protected in the short term a Suspension Order would not reflect the seriousness of the charges and public confidence in the profession and proper professional standards would not be maintained.*
10. *It is agreed that repeated acts of dishonesty which have placed members of the public at risk for personal gain is behaviour which is fundamentally incompatible with continued registration as a professional. A Striking off order would protect the public and maintain public confidence in the profession and professional standards by marking such behaviour as unacceptable for a registered nurse.*

Interim Order Consideration

11. *An interim order is in the public interest. This is because any sanction imposed by the panel will not come into immediate effect but only after the expiry of 28 days beginning with the date on which the notice of the order is sent to the registrant or*

after any appeal is resolved. An interim order of 18 months is necessary to cover any possible appeal period. An interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address public protection and public interest concerns already identified in this document.

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

Here ends the provisional CPD agreement between the NMC and Mrs Bevan. This was signed by Mrs Bevan on 10 January 2021, and by the NMC on 22 January 2021 respectively.

The panel heard and accepted the legal assessor’s advice. He referred the panel to the ‘NMC Sanctions Guidance’ (“SG”) and to the ‘NMC’s guidance on Consensual Panel Determinations’. He reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Mrs Bevan. The legal assessor informed the panel that the NMC’s use of consensual determination has in the past been the subject of criticism by the Professional Standards Authority. It is important to recognise that the Fitness to Practise Panel is not bound by the agreement reached between the parties, and that the panel may reach its own decisions. As set out in para.80 of Council for Healthcare Regulatory Excellence v General Medical Council and Ruscillo [2005] 1 W.L.R. 717 and para.21 of Professional Standards Authority v Nursing and Midwifery Council and Jozi [2015] EWHC 64 (Admin), the Panel's duty to inquire, may require it to request further information, and to direct the NMC to undertake further inquiries and investigation, before making a final determination on the case.

Further, the legal assessor advised the panel to consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

Decision and reasons on the CPD

The panel decided to accept the provisional CPD agreement between Mrs Bevan and the NMC.

It took into account that the provisional CPD agreement contained admissions to the charges, as well as an admission that Mrs Bevan's fitness to practise as a registered nurse is currently impaired.

Whilst the panel noted that the question of impairment is a matter for its consideration alone, the panel was satisfied that the charges are found proved by way of Mrs Bevan's admissions as set out in the signed provisional CPD agreement. For the avoidance of doubt, the two Certificate of Convictions from Cardiff Crown Court confirmed that, upon her own admission, Mrs Bevan had been convicted of the offences specified in the charges.

Decision and reasons on impairment

The panel then went on to consider whether Mrs Bevan's fitness to practise as a registered nurse 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. 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 finds that all of the limbs in the case of Grant are engaged.

The panel noted that the regulatory concerns relate to Mrs Bevan's conduct and behaviour, which occurred both inside and outside of the clinical nursing environment. It noted that Mrs Bevan was performing cosmetic procedures for her own business whilst on sick leave and in receipt of sick pay from Abertawe Bro Morgannwg University Health Board ("ABMUHB"). Mrs Bevan had failed to declare this employment to ABMUHB. Furthermore, Mrs Bevan also falsely represented to two pharmaceutical companies that independent prescribers had authorised submission of private prescriptions for Botox related medicine when they had not. By doing this she had circumvented the proper procedure whereby a medically qualified independent prescriber is required to undertake a clinical assessment and ascertain medical and personal facts about the patient before signing the prescription.

The panel was of the view that, in acting the way that she did, Mrs Bevan had exposed patients to a risk of unwarranted harm. It determined that Mrs Bevan brought the nursing profession into disrepute, as she breached fundamental tenets of the nursing profession by being dishonest and receiving criminal convictions for serious offences.

The panel noted that dishonesty is more difficult to remediate than clinical nursing concerns, in principle. It considered honesty, integrity and trustworthiness to be the bedrock of the nursing profession.

The panel determined that Mrs Bevan had breached the trust placed in her by acting in the manner that she did, which was contrary to the standards expected of a registered nurse. It considered there to be an underlying attitudinal concern present in this case.

The panel had regard to the comments made by Her Honour Judge Rees in Cardiff Crown Court in sentencing Mrs Bevan: “...*That is an absolutely foolhardy way of acting when you have such, firstly, the qualifications to do something worthwhile in the community and secondly, your responsibility for your son. But while you were on bail for those offences, you compound matters by starting to lie to your employers and then, having set up this business, which no doubt could be profitable and supplement your income, but to then, as a nurse, to disregard what seems to me the most fundamental issue and that is the health and safety for your customers using these repeat prescriptions without the correct medical assessments taking place. And it went on for some time and that is why the conclusion is that, in relation to all matters that you in fact have committed offences of such seriousness that they cross the custodial line*”. The panel agreed with these observations.

The panel noted that whilst Mrs Bevan has accepted, through her representative, that her fitness to practise as a registered nurse is currently impaired, it had no evidence before it of any insight, remorse, or remediation demonstrated by Mrs Bevan. The panel recognised that remediation would be extremely difficult given the nature of her convictions and the particular circumstances of the case. Mrs Bevan has provided no explanation for her actions. Therefore, the panel determined that a finding of impairment on public protection grounds is required.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public

confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. It determined that a fully informed member of the public would be appalled by Mrs Bevan's convictions, and extremely concerned should a finding of no current impairment be made in light of her convictions.

Having regard to all of the above, the panel was also satisfied that Mrs Bevan's fitness to practise as a registered nurse is currently impaired on public interest grounds.

Decision and reasons on sanction

Having found Mrs Bevan's fitness to practise to be 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 accepted the advice of the legal assessor. It had careful regard to the SG.

It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the following aggravating factors to be present in this case:

- Mrs Bevan engaged in repeated acts of dishonesty.
- Mrs Bevan had been given a previous warning issued for criminal convictions.
- Mrs Bevan was already subject to police bail at the time of the criminal convictions.
- Mrs Bevan's convictions resulted in her receiving a suspended sentence of imprisonment.
- Members of the public were placed at risk of harm for Mrs Bevan's personal gain.

The panel considered the following mitigating factors to be present in this case:

- Mrs Bevan has admitted the charges and current impairment

The panel first considered whether to take no further 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.

Next, in considering 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 and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel was of the view that Mrs Bevan's actions and convictions were not at the lower end of the spectrum of fitness to practise 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 a conditions of practice order on Mrs Bevan's nursing registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the dishonest conduct involved in this case. It considered there to be no practical identifiable areas of retraining for Mrs Bevan to embark on as there are no outstanding concerns relating to her clinical nursing practice. The concerns identified solely relate to her conduct and behaviour, both inside and outside of the clinical nursing environment. The panel reminded itself that Mrs Bevan's actions could have had serious ramifications and it determined that placing a conditions of practice order on her nursing registration would not adequately address the seriousness of this case, nor would it satisfy the public interest considerations.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that Mrs Bevan had received two serious criminal convictions relating to fraud. It had found Mrs Bevan to have been motivated by personal gain in abusing her position as a registered nurse by claiming sick pay from ABMUHB whilst performing cosmetic procedures for her own business and by falsely representing to two pharmaceutical companies that independent nurse prescribers had authorised the submission of private prescriptions for Botox related medicine.

Mrs Bevan has not offered anything by way of insight or remediation for this panel to take account of in making its determination. In the panel's judgment, Mrs Bevan's behaviour was indicative of a deep-seated attitudinal issue.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. Whilst a suspension order would prevent Mrs Bevan from practising as a registered nurse for a period of time up to one year, the panel was not satisfied that this sanction would be sufficient in having regard to the public protection and public interest concerns identified.

Taking account of all the above, the panel determined that Mrs Bevan's actions and convictions were not merely serious departures from the standards expected of a registered nurse, they were also serious breaches of the law, serious breaches of fundamental tenets of the nursing profession, and were fundamentally incompatible with her remaining on the NMC register. It was of the view that to allow someone who had behaved in this way to maintain her NMC registration would undermine public confidence in the nursing profession and in the NMC as a regulatory body. The panel noted that Mrs Bevan is still subject to a suspended sentence of imprisonment at this current time.

In reaching its decision, the panel bore in mind that its decision would have an adverse effect on Mrs Bevan both professionally and personally. However, the panel was satisfied

that the need to protect the public and address the public interest elements of this case outweighs any negative impact on Mrs Bevan in this regard.

Balancing all of these factors and after taking into account all the evidence before it, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mrs Bevan'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.

Determination on Interim Order

The panel accepted the advice of the legal assessor.

The panel considered the imposition of an interim order and determined that an interim order is necessary for the protection of the public and it is otherwise in the public interest.

The panel determined that an interim conditions of practice order was inappropriate given its earlier findings.

The panel was satisfied that an interim suspension order is necessary in the circumstances of this case. 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 Bevan is sent the decision of this hearing in writing.

That concludes this determination.