

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

**Substantive Order Review Hearing  
Thursday 04 August 2022**

Virtual Hearing

<b>Name of registrant:</b>	<b>Claire Louisa Thirkell</b>
<b>NMC PIN:</b>	01D0782E
<b>Part(s) of the register:</b>	Registered Nurse – Adult (April 2004)
<b>Relevant Location:</b>	Essex
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Andrew Harvey (Chair, Lay member) Richard Curtin (Registrant member) Susan Laycock (Lay member)
<b>Legal Assessor:</b>	John Bromley - Davenport
<b>Hearings Coordinator:</b>	Nandita Khan Nitol
<b>Nursing and Midwifery Council:</b>	Represented by Catherine Scrivens, Case Presenter
<b>Miss Thirkell:</b>	Not present and unrepresented
<b>Order being reviewed:</b>	Suspension Order (6 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Caution order (5 years) to come into effect at the end of 07 August 2022 in accordance with Article 30 (1)</b>

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Thirkell was not in attendance and that the Notice of Hearing had been sent to Miss Thirkell via secure email and also by first class post on 07 July 2022.

Ms Scrivens, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the substantive order being reviewed, the time, dates and joining details of the virtual hearing and, amongst other things, information about Miss Thirkell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Thirkell has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Miss Thirkell**

The panel next considered whether it should proceed in the absence of Miss Thirkell. The panel had regard to Rule 21 and heard the submissions of Ms Scrivens who invited the panel to continue in the absence of Miss Thirkell.

Ms Scrivens referred to a phone conversation between the case officer and Miss Thirkell and submitted that effort was made to contact Miss Thirkell but she was not responsive towards the actions taken by the NMC in relation to the notice of the hearing. Ms Scrivens submitted that Miss Thirkell had a brief engagement during the substantive proceeding, however, after that she did not engage with the NMC in relation to the hearing today and, as a consequence, there was no reason to believe that an adjournment would secure her

attendance on a future occasion. Ms Scrivens submitted that Miss Thirkell had voluntarily absented herself.

The panel accepted the advice of the legal assessor, who referred it to the guidance in *Adeogba v GMC* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Miss Thirkell. In reaching this decision, the panel has considered the submissions of Ms Scrivens. It has had particular regard to relevant case law and to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Miss Thirkell;
- Miss Thirkell has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date; and
- There is a strong public interest in the expeditious review of the case.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Miss Thirkell.

### **Decision and reasons on review of the substantive order**

The panel decided to replace the current suspension order with a caution order.

This order will come into effect at the end of 07 August 2022 in accordance with Article 30(1) of the 'Nursing and Midwifery Order 2001' (the Order).

This is the first review of a substantive suspension order originally imposed for a period of 6 months by a Fitness to Practise Committee panel on 07 January 2022.

The current order is due to expire at the end of 07 August 2022.

The panel is reviewing the order pursuant to Article 30(1) of the Order.

The charge found proved which resulted in the imposition of the substantive order was as follows:

*'That you, registered nurse,*

- 1. On 2 July 2019 accessed Person A's confidential information on more than one occasion without any clinical justification and/or permission.'*

The original panel determined the following with regard to impairment:

*'The panel next went on to decide if as a result of the misconduct, Miss Thirkell's fitness to practise is currently impaired.*

*The panel noted that 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. 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) ...'*

*The panel finds that the first three limbs are engaged in this case. It considered that whilst these concerns are not clinical ones in the context of patient care, by accessing their confidential records without permission, Miss Thirkell's actions put Person A at an unwarranted risk of harm as this had the potential to impact the child court proceedings. The panel also determined that Miss Thirkell breached fundamental tenets of the profession and has brought the reputation of the profession into disrepute. It considered that Miss Thirkell abused her position of trust and failed to act with integrity and professionalism.*

*In relation to whether Miss Thirkell is currently impaired by reason of her misconduct, the panel had regard to the case of Cohen v General Medical Council, in which the court set out three matters which it described as being 'highly relevant' to the determination of the question of current impairment:*

- '(a) Whether the conduct that led to the charge(s) is easily remediable?*
- (b) Whether it has been remedied?*
- (c) Whether it is highly unlikely to be repeated?'*

*The panel bore in mind that the concerns in this case relate to Miss Thirkell's professionalism and integrity, and as a result, are not easy to remediate. Whilst not easily remediable, the panel was satisfied that Miss Thirkell's conduct is capable of remediation.*

*However, taking into account all of the information before it, the panel was of the view that Miss Thirkell has not taken steps to address the regulatory concerns in this case. It noted that she has limited engagement with NMC and has not provided a reflective piece. There is no evidence that she has developed any insight into the seriousness of her misconduct and understands the impact it has on the reputation of the profession. Whilst Miss Thirkell did eventually accept that she accessed Person A's file, the panel bore in mind that this admission was only partial and that she initially denied this fact during the local level investigation and does not acknowledge the aspect of her motivation in seeking potential advantage in the family proceedings. Furthermore, there is no evidence to suggest that Miss Thirkell has practised since being dismissed in November 2019 or has completed any training to remedy the concerns in her practice. In light of all of the above, the panel concluded that there is a risk of repetition in this case.*

*Whilst these concerns do not relate to patient care, the panel considered that Miss Thirkell's actions had the potential to cause serious psychological damage to Person A. As such, the panel concluded that a finding of current impairment was required to protect the public.*

*The panel also concluded that a finding of current impairment was necessary on public interest grounds. It was the view of the panel that Miss Thirkell's conduct was so serious that a finding of current impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards.'*

The original panel determined the following with regard to sanction:

*'Having found Miss Thirkell'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 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:*

- *Limited engagement with the NMC;*
- *Lack of insight or remediation;*
- *Abuse of position of trust for a personal gain.*

*The panel also took into account the following mitigating feature:*

- *Miss Thirkell was going through difficult personal circumstances and stress at the time.*

*The panel first considered whether to take no action or to impose a caution order but concluded that this would be inappropriate in view of the ongoing public protection and public interest issues identified. The panel decided that an order which does not restrict Miss Thirkell's practice in some way would not mitigate the ongoing risk in this case.*

*The panel next considered whether placing conditions of practice would be a sufficient and appropriate response. The panel took into account the SG and was mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel noted that the concerns in this case relate to Miss Thirkell's professionalism and integrity and therefore would be difficult to address with conditions. The panel also bore in mind that Miss Thirkell has not shown a willingness to fully engage with the NMC, develop insight into the failings in her practice, or taken steps to remedy her practice. The panel therefore determined that a conditions of practice order was not workable or appropriate as it was not satisfied that if it were to impose conditions, that Miss Thirkell would comply with them.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:*

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems; and*
- *No evidence of repetition of behaviour since the incident.*

*The panel was of the view that a suspension order would be the appropriate and proportionate sanction. It bore in mind the seriousness of the concerns in this case, that being, abusing a position of trust for personal gain. Although there is some evidence of attitudinal problems, the panel considered that a suspension order would both adequately protect the public and satisfy the public interest. The panel noted the hardship such an order will inevitably cause Miss Thirkell but considered that this is outweighed by the public interest in this case. The panel took the view that this order is 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.*

*It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Thirkell case to impose a striking-off order.*

*The panel determined that a suspension order for a period of 6 months was sufficient to allow Miss Thirkell time to address the regulatory concerns in this case and engage with the NMC.*

*At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.*

*Any future panel reviewing this case would be assisted by:*



- *Miss Thirkell's attendance at the next hearing*
- *A reflective piece which addresses the impact of her actions on Person A, her employer at the time, and the nursing profession*
- *Any testimonials or references from her employer, whether in paid or voluntary employment*
- *Any evidence of training undertaken by Miss Thirkell, specifically in relation to professionalism, respect, and integrity.'*

### **Decision and reasons on current impairment**

The panel has considered carefully whether Miss Thirkell's fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle and it has taken account of the submissions made by Ms Scrivens on behalf of the NMC.

Ms Scrivens outlined the background of the case and referred the panel to the relevant pages in the bundle. She submitted that there was no material before the panel today in respect of Miss Thirkell's progress in addressing her insight, remediation or strengthening her practice. She has also failed to address the recommendations made by the previous panel. Ms Scrivens submitted that there is no evidence before the panel to suggest that Miss Thirkell has undertaken any training regarding the misconduct.

Ms Scrivens submitted that the NMC's position has not changed since the substantive hearing where it submitted that the appropriate outcome was three months suspension on the grounds of public interest.

In answering the panel's question Ms Scrivens subsequently submitted that it is a matter for the panel to decide whether Miss Thirkell is still impaired but stated that the NMC is neutral with regard to impairment, and she submitted that the NMC is seeking impairment solely on public interest grounds.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether Miss Thirkell 's fitness to practise remains impaired.

The panel noted that the original panel found that Miss Thirkell had shown limited signs of engagement with the NMC and was going through difficult personal circumstances and stress at the time. At this hearing the panel had no information before it to demonstrate that Miss Thirkell had developed her insight, what steps she had taken and what measures she had put in place to prevent a repetition of similar incidents in the future.

The panel also had no information before it whether Miss Thirkell had remediated the actions that led to her conviction.

The panel noted that the burden to provide such information rests with the registrant and it was disappointed that Miss Thirkell did not engage with the process and that the panel had no information before it today to demonstrate any progress since the substantive hearing. The panel was concerned that this may indicate an unwillingness by Miss Thirkell to take these proceedings seriously.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment is required solely on the public interest grounds. It concluded that there was no evidence of ongoing risk of harm to patients and the public, hence it did not find impairment on the grounds of public protection.

For these reasons, the panel finds that Miss Thirkell 's fitness to practise remains impaired on the grounds of public interest.

Having found Miss Thirkell 's fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the misconduct. 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 considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel concluded that no useful purpose would be served by a conditions of practice order. It is not necessary to protect the public and would not assist Miss Thirkell's return to nursing practice. The panel further considered that a suspension order would be wholly disproportionate in this case.

The panel took account of the fact that this was a single instance of misconduct with no adverse findings in relation to Miss Thirkell's practice either before or since the incident. Therefore, the panel determined that a caution order would adequately protect the public. For the next five years, Miss Thirkell's employer - or any prospective employer - will be on notice that her fitness to practise had been found to be impaired and that her practice is subject to a restriction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for a period of five years would be the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but

also send the public and the profession a clear message about the standards required of a registered nurse.

At the end of this period the note on Miss Thirkell's entry in the register will be removed. However, the NMC will keep a record of the panel's finding that her fitness to practise had been found impaired. If the NMC receives a further allegation that Miss Thirkell's fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This caution order will take effect upon the expiry of the current substantive suspension order, namely the end of 7 August 2022 in accordance with Article 30(1).

This will be confirmed to Miss Thirkell in writing.

That concludes this determination.