

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

Substantive Hearing

Wednesday, 28 August 2024 – Friday, 30 August 2024

Virtual Hearing

Name of Registrant:	Clair McCluskie
NMC PIN	07J0140S
Part(s) of the register:	Registered Nurse Adult – 20 September 2010 Nurse Independent/Supplementary prescriber V300 – 16 August 2017
Relevant Location:	Lanarkshire
Type of case:	Conviction
Panel members:	Janet Fisher (Chair, Lay member) Elisabeth Fairbairn (Registrant member) Ian Dawes (Lay member)
Legal Assessor:	Laura McGill
Hearings Coordinator:	Leigham Malcolm
Nursing and Midwifery Council:	Represented by Stephanie Stevens, NMC Case Presenter
Ms McCluskie:	Present and unrepresented
Facts proved by admission:	Charges 1a, b, c, d, e, f
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

That you, a registered nurse;

1) *On 8 August 2023 at Hamilton Sheriff Court were convicted of the common law offences of:*

- a. stealing a purse, including a bank card belonging to Patient A at Burbank Medical Centre on 5 July 2022.*
- b. Pretending to an employee of B&M Bargains Blantyre that you were the lawful holder of a debit card in the name of Patient A, inducing the said employee to accept the card in payment for goods to the value of £9.96 which you did obtain by fraud*
- c. Pretending to an employee of Morrison's Petrol Station Bathgate that you were the lawful holder of a debit card in the name of Patient A inducing the said employee to accept the card in payment for goods to the value of £32.00 which you did obtain by fraud.*
- d. Stealing a bank card belonging to Patient B at Burnbank Medical Centre on 10 August 2022.*
- e. Pretending to an employee of Burnbank Service Station Hamilton that you were the lawful owner of a debit card in the name of Patient B inducing the said employee to supply goods to the value of £40.01 by fraud.*
- f. Pretending to an employee at Burnbank Service Station Hamilton that you were the lawful owner of a debit card in the name of Patient B inducing the said employee to supply you goods to the value of £23.98 by fraud.*

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

Background

On 5 July 2022 Patient A attended Burnbank Medical Centre (the centre) in Hamilton, Lanarkshire, for an appointment. On 6 July 2022 Patient A reported the theft of a purse from her handbag and fraudulent activity on her debit card to the police.

On 31 August 2022 the Nursing and Midwifery Council (NMC) received a referral from the Practice Manager of the centre.

The referral set out that following a consultation with you on 12 August 2022, Patient B had reported the theft of her bank card to Police Scotland.

You were arrested and charged on 26 August 2022 in connection with the theft from Patient B and arrested and charged on 7 January 2023 in connection with the theft of a debit card from Patient A.

On 8 August 2023 at Hamilton Sheriff Court, you pleaded guilty to the offences of Theft x 2 contrary to Common Law and Fraud x 4 contrary to Common Law.

On 12 September 2023 you were sentenced to a Community Payback Order with a Supervision Period of 12 months, Unpaid Work/Activities Period of 120 hours to be completed within 12 months. In addition, there was a further court order directing that you pay compensation to Patient A and Patient B totalling £81.97.

Decision and reasons on application for hearing to be held in private

At the outset of the hearing Ms Stevens, on behalf of the NMC, informed the panel that during the course of the proceedings she would be raising matters related to [PRIVATE]. In order to keep [PRIVATE] out of the public domain, she requested that such parts be heard in private pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You supported the application to hear any matters relating to [PRIVATE] in private. You also told the panel your court case had been reported in the local news [PRIVATE]. [PRIVATE] you requested for the entire hearing to be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel considered the submissions of both Ms Stevens and yourself. The panel was of the view that there was a strong public interest in the hearing of your case being transparent and available to the public. It was not satisfied that your interest in an entirely private hearing outweighed the public interest in the principle of open justice. It did however accept that any matters relating to [PRIVATE] ought to be heard in private, and not made available to the public, in accordance with Rule 19.

For these reasons the panel determined to hear only [PRIVATE] in private, as and when they arose.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you admitted charges 1a, b, c, d, e and f. The panel therefore found these charges proved in their entirety, by way of your admissions.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction. 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.

Submissions on impairment

Ms Stevens addressed the panel on the issue of impairment and reminded the panel to have regard to protecting 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. This included reference to the case(s) of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), and *Cohen v GMC* [2008] EWHC 581.

Ms Stevens submitted that there were inconsistencies in your accounts. She highlighted that in the police report you said that you found the purse and bank cards of both patients. Whereas in the pre-sentence reports you stated that you were in financial difficulty and provided that as a reason for using the bank cards. She submitted that despite your assertions, your actions were deliberate.

Ms Stevens submitted that your insight into your conduct is limited and self-centred. She told the panel that you had minimised your actions, stating “none of this would have happened if I had not been dismissed”, and avoided taking responsibility.

Ms Stevens told the panel that no testimonials or references had been provided nor was there any evidence of remediation.

Ms Stevens submitted that the facts of your case illustrated an attitudinal problem, and she invited the panel to find your fitness to practise currently impaired.

You gave evidence under oath.

You explained to the panel that you were experiencing financial difficulty at the time. [PRIVATE]. These factors led you to take Patient A’s purse and Patient B’s bank card, which you clarified that you did in fact do intentionally. You told the panel that you accept and take full responsibility for your actions.

When asked what triggered the theft, you explained that you had no money for petrol and would have been unable to get to work the following day. [PRIVATE]. Further, if you were to find yourself in similar circumstances again in future, then you would seek support from the NMC and from your manager.

[PRIVATE].

The panel accepted the advice of the legal assessor which included reference to NMC guidance surrounding impairment and the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2008] EWHC 581.

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, your fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. 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/their fitness to practise is impaired in the sense that S/He/They:

- 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 found that patients were caused financial and emotional harm as a result of your conduct, for which you received a conviction. Your conduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

[PRIVATE].

You told the panel that if you were to find yourself in similar circumstances again in future, then you would seek support from the NMC. However, the NMC would not be able to provide appropriate support. [PRIVATE]. You have not provided any evidence from either paid or unpaid work relating to managing the day-to-day pressures in a working environment. From the evidence you provided the panel was not assured that your insight into [PRIVATE] is sufficiently developed to enable you to create a viable plan to mitigate the risk of repetition. This is corroborated by the criminal justice social work report.

[PRIVATE].

The panel accepted Ms Steven's submission, that your insight appeared to be limited and self-centred. You made no meaningful reference to the impact of your actions upon Patient A, Patient B, your colleagues or the wider nursing profession. Further, although you said that these actions were out of character, the panel had no references or testimonials before it speaking to your character to support your assertion. The panel could not be assured that your conduct was out of character.

The panel is of the view that there is a risk of repetition based on your limited insight and the absence of any remediation. The panel considered your conviction for theft and fraud from patients in your care to be indicative of a serious attitudinal issue. It bore in mind that the issue of dishonesty is extremely difficult to remediate. In your case, there was very little information to suggest that you had begun to remediate that dishonesty.

The panel was not sufficiently satisfied that you would act differently if you were to find yourself in a similar situation in future. It 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 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 therefore determined that a finding of current impairment was also required on public interest grounds.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike your name from the register. The effect of this order is that the NMC register will show that you have 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.

Submissions on sanction

Ms Stevens informed the panel that the NMC had advised you that it would seek the imposition of a striking off order if your fitness to practise were found to be currently impaired.

Ms Stevens submitted that the following factors served as aggravating features in your case:

- The conduct was premeditated and involved a high level of planning and recklessness.
- Your conduct formed a pattern over a period of time which suggested a deep-seated behavioural issue.
- The conduct amounted to an abuse of a position of trust and dishonesty, which both compound the seriousness.
- You have demonstrated a lack of insight into your behaviour
- It is highly likely that the behaviour will be repeated.

In terms of mitigating factors, Ms Steven's provided the following:

- There are no concerns which relate to your clinical practice.

- You entered a guilty plea at court and made admissions to the charges in these proceedings.
- [PRIVATE].

Ms Steven's submitted that in the circumstances of your case, only a striking-off order would be sufficient to protect the public and satisfy the public interest.

You provided the panel with a reflective statement, a [PRIVATE] letter dated August 2024, and a positive testimonial.

You told the panel that you feel deep regret and remorse for your actions. You appreciate the trauma that you may have caused Patient A and Patient B, and you are sorry for this.

[PRIVATE].

You stated that you have been working occasional shifts at Edinburgh Salt Rooms and received positive feedback for your efforts there.

You told the panel that you are dedicated to nursing and if given the chance, you would love to return to nursing and continue supporting diabetic patients. Going forward, you will engage with any training and support measures that the NHS are able to provide. You invited the panel to impose a suspension order and stated that you would use the period of suspension to ensure that you undertook training and were in a position to return to nursing.

Decision and reasons on sanction

Having found your 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 identified the following aggravating features:

- The first instance of theft in July 2022 may have been opportunistic; however, a pattern arose, and the circumstances suggest a clear thought process and an active decision to commit the subsequent fraud offences on more than one occasion, and to repeat the behaviour in August 2022.
- The conduct amounts to an abuse of a position of trust.
- The insight you have demonstrated is limited.
- The emotional and financial harm inevitably caused to Patient A and Patient B.

The panel also identified the following mitigating features:

- There are no concerns which relate to your clinical practice.
- You entered a guilty plea and made admissions to the charges.
- [PRIVATE].
- You were experiencing [PRIVATE], and financial difficulties at the time, as well as going through an employment tribunal.

The panel took account of the reflective statement, a [PRIVATE] letter dated August 2024, and a positive testimonial from a friend, all of which you submitted today.

The panel had regard to the SG relating to cases involving dishonesty and identified the following factors within your case:

- Misuse of power
- Vulnerable victims
- Personal financial gain from a breach of trust
- Direct risk to people receiving care.

On the spectrum of dishonesty, the panel considered your conduct to be at the more serious end as the offences of theft and fraud were intrinsically dishonest and took advantage of vulnerable patients in your care.

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 nature and seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 your offence 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 your 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. Further, none of the issues in your case relate to your clinical practice. The nature of the offence and the dishonesty identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel found that the factors set out above did not apply in your case.

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

Your actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with you remaining on the register. Although the sums of money obtained by fraud were not high, the nature of the fraud and the abuse of your position as a registered nurse compound the seriousness of the offence. The

offence in your case is intrinsically dishonest and takes advantage of vulnerable patients in your care. The panel considered there to be a risk of repetition of similar conduct, and therefore public protection concerns are engaged. The panel was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you 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 effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, 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 you 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. The panel heard the submissions of Ms Stevens and accepted the advice of the legal assessor. 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 your own interests until the striking-off order takes effect.

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 to allow sufficient time for any potential appeal period.

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

That concludes this determination.