

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

**Substantive Meeting
Tuesday, 10 September 2024**

Virtual Meeting

Name of Registrant: Janine Wray

NMC PIN: 10J0091N

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nurse – Level 1 (22 October 2010)

Relevant Location: Newry

Type of case: Conviction

Panel members: Sue Heads (Chair, Lay member)
Elizabeth Coles (Registrant member)
Suzanna Jacoby (Lay member)

Legal Assessor: Peter Jennings

Hearings Coordinator: Eyram Anka

Facts proved: Charge 1

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel noted that the Notice of Meeting had been sent to Mrs Wray's registered email address by secure email on 5 August 2024.

The panel accepted the advice of the legal assessor concerning the requirements of service.

The panel took into account that the Notice of Meeting provided details of the allegation, and the time and dates of the meeting.

In the light of all of the information available, the panel was satisfied that Mrs Wray 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 charge

That you, a registered nurse:

- 1) On 18th October 2023 at Newry Courthouse were convicted of theft, contrary to section 1 of the Theft Act (Northern Ireland) 1969 in respect of stealing a wallet and cash to the total value of £152.00 or thereabouts on 22 September 2022.

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

Background

At the relevant time Mrs Wray was employed as a Band 5 District Nurse with the Southern Health & Social Care Trust ("the trust"). In July 2022, a patient living in the community raised concerns about money missing from his home. The patient did not wish to report these concerns to the police at the time.

The patient's niece and his key worker installed a hidden camera at his home. On 22 September 2022, the patient reported to his carers that his wallet was missing. The patient's niece and key worker reviewed the CCTV footage from the hidden camera and identified Mrs Wray taking the patient's wallet and placing it in her pocket and not returning it.

This incident happened whilst Mrs Wray was on duty caring for the patient. Mrs Wray denied the allegation in the local investigation. Mrs Wray also denied it during the police investigation and pleaded not guilty to the offence. On 18 September 2023 Mrs Wray stood trial at Newry Courthouse and was found guilty of the offence as outlined in the charge. On the same day Mrs Wray resigned from the trust before the conclusion of the disciplinary proceedings. On 18 October 2023 Mrs Wray was convicted by Newry Courthouse and sentenced to six months imprisonment, suspended for 18 months. She was further ordered to pay compensation of £152.00.

Decision and reasons on facts

The panel noted that Mrs Wray's name on the NMC Register is 'Janine Wray', whereas the Police conviction is under the name 'Janine Rafferty'. However, the panel was satisfied that there is sufficient evidence before it to conclude that both names are referring to the same person.

The charge concerns Mrs Wray's conviction 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). 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.'*

Fitness to practise

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

Representations on impairment

In reaching its decision, the panel bore in mind its overarching objective to protect the public and the wider public interest. This includes 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) and *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin).

The NMC provided written submissions on impairment.

'6. Mrs Wray has not made a formal admission that her fitness to practise is impaired by reason of her conviction. However current impairment is a matter for the panel's judgment.

7. The NMC's guidance explains that impairment (DMA-1) is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. 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?"

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

9. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.

10. When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

- 1) has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or
- 2) has [the Registrant] in the past brought and/or is liable in the future to bring the nursing profession into disrepute; and/or
- 3) has [the Registrant] in the past committed a breach of one of the fundamental tenets of the nursing profession and/or is liable to do so in the future and/or
- 4) has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.

11. It is the submission of the NMC that questions 1, 2, 3, and 4 can be answered in the affirmative in this case.

12. In relation to the first limb Mrs Wray has stolen from a patient in her care. Her conduct indicates that patients will be placed at risk of serious harm. The CCTV evidence that captured the offence was a hidden camera. It was put in place by the patient's niece and key worker because the patient had raised concerns 2 months earlier that money was missing from his home. Therefore, suggesting that the incident on 22 September 2023 was an escalation in dishonest conduct by Mrs Wray. The lack of insight does not alleviate any concerns that Mrs Wray may do this again in the future.

13. In relation to the second limb Mrs Wray has brought the nursing profession into disrepute by virtue of his conviction for a dishonesty offence, namely theft. Mrs Wray abused her position of trust whilst caring for a vulnerable patient in their home. Mrs Wray denied the allegations of theft and during the local investigation claimed that the object seen in the CCTV footage was a notebook not a wallet.

However, during her police interview Mrs Wray claimed the item seen on CCTV was a pressure cushion not a wallet. There is a significant chance that Mrs Wray's dishonest behaviour will persist as she has displayed deep seated attitudinal concerns.

14. In relation to the third limb Mrs Wray has breached a fundamental tenet of nursing by causing harm, in this case financial harm, by stealing from a patient. A vulnerable elderly patient, that she knew kept his personal belongings close to him due to immobility.

15. In relation to the fourth limb Mrs Wray acted dishonestly as exemplified by her conviction for the offence of theft. Given her not guilty plea, lack of admissions and insight she is liable to act with dishonesty in the future.

Public protection

16. 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 whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

17. The conviction relates to conduct during Mrs Wray's professional practice. Mrs Wray abused her position of trust when caring for a vulnerable patient and stole his wallet.

18. The NMC consider there is a continuing risk to the public. Mrs Wray has not demonstrated any insight, she denied the allegations at local level and during the police investigation. She has not admitted the charge in these proceedings or provided any reflection or other evidence of insight such that the risk of repetition has diminished. Applying the NMC's guidance on insight and strengthened practice (FTP-14), the NMC submit that the concerns in this case are so serious that they are difficult to remediate.

Public interest

19. *In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

“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.”

20. *Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.*

21. *In this respect the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

22. *However, there are some types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct, or to maintain public confidence in the profession.*

23. *In the light of Mrs Wray's conviction for theft it is deemed that a finding of impairment is also required in the public interest. This is to uphold proper professional standards of conduct and to maintain confidence in the nursing profession and the NMC as the regulatory body. If such a finding were not made this is likely to erode confidence in the profession and may deter the public from seeking necessary care.'*

The panel accepted the advice of the legal assessor which included reference to the principles in a number of relevant judgments.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the guidance in 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 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]... conviction... 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*
- a) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel determined that all four limbs of *Grant* are engaged in this case. The panel found that a patient was put at an unwarranted risk of harm and was caused financial (and potentially emotional) harm as a result of Mrs Wray's conduct. Mrs Wray's conviction brought the profession into disrepute and breached the fundamental professional tenets of acting with honesty and integrity and putting the interests of the patient first. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not regard findings of dishonesty as extremely serious. The panel determined that this was a particularly serious breach of trust as Mrs Wray took advantage of a vulnerable patient by stealing from him in his home.

The panel had no evidence of insight or remorse. Although this incident occurred two years ago, there are no representations from Mrs Wray addressing the seriousness of the offence or how her actions negatively impacted the patient and the nursing profession.

It was of note to the panel that Mrs Wray has not engaged with the NMC process at any stage. It also had regard to Mrs Wray's denial of the charge during the local investigation and her continued denial of the criminal charges and her plea of not guilty, even in the face of CCTV evidence.

It was of concern to the panel that, in Court, Mrs Wray did not take any responsibility for her actions, even though she was presented with CCTV evidence of her committing the offence. The panel determined that given the lack of insight or accountability, there is an ongoing risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC 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.

The panel determined that, in this case, a finding of impairment is also required on public interest grounds. Mrs Wray was given a six-month custodial sentence (suspended for a year and six months) for theft from a patient. The panel concluded that a member of the public, fully apprised of the facts of the case, would be concerned if a finding of current impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Mrs Wray's 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 Mrs Wray off the register. The effect of this order is that the NMC register will show that Mrs Wray has been struck off the register.

Representations on sanction

The panel bore in mind the NMC's written submissions on sanction.

'24. Considering the NMC Sanctions Guidance on sanctions (SAN-3), the NMC submits that the appropriate and proportionate sanction is a striking-off order.

25. Regarding aggravating features, it is submitted that Mrs Wray has failed to display any insight into her conduct behind the conviction. Mrs Wray abused her position of trust and committed the offence in the home of the patient whilst providing care. Mrs Wray breached the patient's trust by stealing from him in his own home where he was entitled to feel safe and protected. The patient was an elderly gentleman, with immobility. As referenced in Mrs Wray's local statement the patient sat in his chair all day with a pressure cushion and personal his belongings by his side, such as money and cigarettes. On 22 September 2022 Mrs Wray had attended to change a dressing on his leg and change his pressure cushion when she stole the patient's wallet. The patient is now deceased. No mitigating features have been identified.

26. Taking the least serious sanction first, it is submitted that to take no action (SAN-3a) is inappropriate given the identified risk of harm to the public and the gravity of the misconduct as outlined above.

27. A Caution Order (SAN-3b): would only be appropriate where there is no risk to the public or patients, but some acknowledgment needs to be made to show that the behaviour was unacceptable and must not happen again. In the circumstances of this case such a sanction would be inappropriate as it would not sufficiently

protect patients from the unwarranted risk of significant harm or mark the seriousness of the conduct.

28. A Conditions of Practice Order (SAN-3c) could not be formulated to guard against the unwarranted risk of harm posed by Mrs Wray, nor would it reflect the gravity of her actions.

29. A Suspension Order (SAN-3d): would not be appropriate as Mrs Wray's conviction is fundamentally incompatible with continued registration, having stolen the wallet of a vulnerable patient whilst ostensibly caring for him in his own home. Mrs Wray has not engaged with the NMC proceedings and has not demonstrated any insight into her conduct. There is clearly evidence of harmful deep-seated personality or attitudinal problems and Mrs Wray poses an ongoing risk of harm to the public.

30. It is submitted that a Striking-off order (SAN-3e) is the only sufficient sanction in this case. The NMC guidance sets out 3 key points for the panel to consider before imposing a striking-off order:

- a) Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- b) Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife, or nursing associate is not removed from the register?*
- c) Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

31. It is submitted that the three key considerations set out in that guidance support the making of a striking-off order in this case. It is also necessary to consider the sentence upon Mrs Wray, a 6-month custodial sentence that was suspended for 18 months.

32. In the case of Council for the Regulation of Health Care Professionals v General Dental Council [2005] EWHC 87 (QB) a case concerning a conviction, Mr Justice Newman said that:

“As a general principle, where a practitioner has been convicted of a serious criminal offence or offences, he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise...”

33. The suspended sentence imposed by the court is due to expire in April 2025. Mrs Wray’s dishonest behaviour and breach of trust fundamentally undermines her trustworthiness as a registered professional. Her actions are wholly incompatible with remaining on the nursing register. The case of Bolton v Law Society [1994] 1 WLR 512, illustrates the principle that the reputation of the profession is more important than the fortunes of any individual member of that profession. The NMC submit that the appropriate and proportionate sanction in all circumstances of this case is a striking-off order.’

Decision and reasons on sanction

Having found Mrs Wray’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.

In reaching its decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the SG published by the NMC. The panel accepted the advice of the legal assessor concerning the principles to which it should have regard.

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Stealing from a vulnerable patient in their own home
- No evidence of insight or remorse

- Conduct which put patients at risk of suffering harm
- Personal financial gain

The panel determined that there is no evidence before it to identify any mitigating factors.

The panel had regard to the NMC guidance on '*Considering sanctions for serious cases*', reference 'SAN-2', namely the section about cases involving dishonesty which states,

'Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- ...
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to people receiving care*
- ...

Dishonest conduct will generally be less serious in cases of:

- *one off incidents...'*

Although Mrs Wray's conviction relates to a single incident, the panel was satisfied that there was sufficient evidence before it to determine that Mrs Wray's conduct was serious enough to question her suitability to remain on the register. The panel is aware that it was suggested that other sums have gone missing; the panel had no information regarding those allegations and it has put them out of its mind.

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 Mrs Wray'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 Mrs Wray's misconduct was far from being at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Wray'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. Furthermore, the panel concluded that the placing of conditions on Mrs Wray's registration would not adequately address the seriousness of this case and would not protect the public or prevent Mrs Wray from repeating conduct of the kind found proved.

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;*
- *No evidence of repetition of behaviour since the incident;*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel acknowledged that this was a single incident and that there is no evidence of repetition since. However, it noted that there is no

evidence of insight or remorse and Mrs Wray has offered no explanation or reasons for her behaviour. It determined that the type of dishonesty involved in this case suggests attitudinal issues. In the panel's view, the serious breach of the fundamental tenets of the profession evidenced by Mrs Wray's actions is fundamentally incompatible with Mrs Wray remaining on the register. The panel found that a suspension order would not mark the seriousness of this case. Accordingly, the panel concluded that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Mrs Wray's actions were significant departures from the standards expected of a registered nurse and are, in the panel's judgement, fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Wray'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 Mrs Wray's actions in bringing the profession into disrepute and breaching the fundamental principles of the profession, the panel has concluded that nothing short of this would be sufficient in this case.

The panel determined that whilst a conviction does not mean a nurse would automatically be struck off the register, in the circumstances of this case, a striking-off order is proportionate.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession and to declare to the public and profession the standard of behaviour required of a registered nurse.

This will be confirmed to Mrs Wray in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, or later in the event of an appeal, 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 is in Mrs Wray's own interests. The panel heard and accepted the advice of the legal assessor concerning its powers in the matters it should take into account.

Representations on interim order

The panel took account of the representations made by the NMC.

'34. The NMC invites the panel to impose an interim suspension order for a period of 18 months on the grounds that it is necessary for public protection and is otherwise in the public interest. This is necessary because the substantive order will not take effect for some 28 days and should an appeal be lodged Mrs Wray would otherwise be entitled to practise without restriction until the conclusion of the appeal proceedings.'

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. In reaching the decision to impose an interim order,

the panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive 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 for the time that may be taken before an appeal can be heard. Not to do so would be inconsistent with the sanction imposed and the panel's view that Mrs Wray's actions were incompatible with remaining on the register. The panel took account of the impact that an interim order will have on Mrs Wray, but was satisfied that this order, for this period, is proportionate.

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

That concludes this determination.