

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Meeting 24 September 2020

Virtual meeting

Name of registrant:	Joanne Elisabeth Chiswell
NMC PIN:	08H0209E
Part(s) of the register:	Sub Part 1 RNMH: Mental health nurse (16 October 2008)
Area of registered address:	England
Type of case:	Conviction
Panel members:	Anne Asher (Chair, lay member) Allison Hume (Registrant member) June Robertson (Lay member)
Legal Assessor:	Gillian Hawken
Panel Secretary:	Rob James
Facts proved:	Charge 1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Service of Notice of hearing

The panel took account of the fact that the Notice of Meeting had been sent to Miss Chiswell's registered address by recorded delivery on 20 August 2020.

The panel took into account that the Notice of Meeting provided details of the allegation, the reason why this case was to be considered at a meeting and that the meeting would take place on or after today's date.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Chiswell 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 24 June 2019 in the Crown Court at Leicester, were convicted of fraud, contrary to section 1 of the Fraud Act 2006

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

Decision and reasons on facts

The charges concerns Miss Chiswell'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) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom*

- (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

Background

Miss Chiswell self-referred to the NMC on 19 June 2019 in relation to ongoing criminal proceedings against her.

On 24 June 2019 in the Crown Court sitting at Leicester Miss Chiswell was convicted of fraud, contrary to section 1 of the Fraud Act 2006 and was sentenced to 18 months imprisonment suspended for a period of 2 years.

The circumstances of the offence are that between 1 May 2012 and 31 March 2015 Miss Chiswell, whilst having Power of Attorney, abused her position to defraud her mother of approximately £90,000.

Fitness to practise

Decision and reasons on impairment

Having found the charge proved, the panel next went on to decide if as a result of the conviction, Miss Chiswell's fitness to practise is currently impaired.

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

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel was of the view that Miss Chiswell's actions engaged limbs b, c and d of the Grant Judgment. The panel gave careful consideration to limb a and was of the view that,

although there was financial harm and likely emotional harm caused to Miss Chiswell's mother, there was no direct harm risk of harm to patients in her care. Furthermore, the actions for which Miss Chiswell was convicted clearly brought the nursing profession into disrepute. The panel considered that honesty and integrity are fundamental tenets of the profession and that Miss Chiswell's actions in defrauding her mother breached those fundamental tenets and was inherently dishonest.

The panel was mindful that remediation of conduct involving dishonesty is not easily demonstrated but that evidence of insight and genuine remorse may be relevant to the risk of repetition. The panel had nothing before it in this regard.

Although Miss Chiswell's actions that led to her conviction did not take place at work, the panel noted the Judge's sentencing remarks and, in particular, his comments that he did "*not suppose for one moment you will offend again*". However, the panel took into account that it was necessary for it to develop its own view on this and considered that there was nothing before it that suggested that Miss Chiswell would not repeat her actions if she had the opportunity to do so.

The panel is therefore of the view that there is a risk of repetition based on Miss Chiswell's lack of insight, remediation and remorse into her actions which resulted in a conviction for fraud. 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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required. It was of the view that a member of the public would be shocked and appalled having learnt of Miss Chiswell's actions which involved defrauding her mother of a significant amount of money. The public would consider a nurse to be caring and have other's needs at the

forefront of their thoughts. It is apparent that only financial gain was on Miss Chiswell's mind at this time.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case.

Having regard to all of the above, the panel was satisfied that Miss Chiswell'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 Miss Chiswell off the register. The effect of this order is that the NMC register will show that Miss Chiswell has 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.

Decision and reasons on sanction

Having found Miss Chiswell'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:

- The offence of dishonesty was committed over a number of years;
- There was a breach of trust involving personal financial gain;
- Miss Chiswell's actions demonstrated a misuse of power;
- A vulnerable victim was involved.

The panel also took into account the following mitigating features:

- Admissions made to impairment suggest some insight
- Incidents of dishonesty occurred in Miss Chiswell's private life
- Miss Chiswell self-referred herself to the NMC.

Having had regard to the conviction that led to Miss Chiswell's referral to the NMC, the panel took into consideration the NMC's guidance on "*Considering sanctions for serious cases*" and in particular the section entitled "*cases involving dishonesty*". The panel noted although Miss Chiswell's actions did not take place while she was practising as a registered nurse, they involved a misuse of power and a vulnerable victim. Further, Miss Chiswell experienced personal financial gain from a position of trust through long standing deception. The panel therefore determined that the dishonesty in the case was at the higher end of seriousness.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Chiswell's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Chiswell's actions were not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Chiswell's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can

be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Chiswell's 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 suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

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

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel also took into account the NMC guidance entitled “*considering sanctions for serious cases*” and in particular the section entitled “*cases involving criminal convictions or cautions*”.

Miss Chiswell’s actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Chiswell’s actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Miss Chiswell’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 was of the view that the public would be concerned if a more lenient sanction was made having made itself familiar with all of the details of the case.

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

This will be confirmed to Miss Chiswell in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Chiswell’s own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to protect the public during any possible appeal of the substantive decision made by Miss Chiswell.

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

That concludes this determination.