

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

Substantive Meeting

2 June 2021

Virtual Meeting

Name of registrant:	Rebecca Louise Topczyklo-Evans
NMC PIN:	02C0465W
Part(s) of the register:	Registered Nurse (Sub Part 1) Mental Health Nursing – March 2005
Area of Registered Address:	Mid Glamorgan
Type of Case:	Conviction
Panel Members:	Phil Sayce (Chair, Registrant member) Emily Fraser-Mackenzie (Registrant member) Tom Ayers (Lay member)
Legal Assessor:	Simon Walsh
Panel Secretary:	Caroline Pringle
Facts proved:	1
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Not imposed

Details of charge

That you, a registered nurse

1. On 4 November 2019 were convicted at the Merthyr Tydfil Magistrates Court of the following offence:

1.1. Fraud, contrary to sections 1 and 3 of the Fraud Act 2006.

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

Decision on service of notice of meeting

The panel considered whether notice of this meeting has been served in accordance with Rules 11A and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Rules”).

The panel accepted the advice of the legal assessor. The panel noted that, under the amendments made to the Rules during the Covid-19 emergency period, a notice of hearing or meeting can be sent to a registrant’s registered address by recorded delivery and first class post or to a suitable email address on the register.

The panel noted that notice of this substantive order review meeting was sent to Mrs Topczyklo-Evans by email to her registered email address on 27 April 2021.

The notice informed Mrs Topczyklo-Evans that a panel of the Fitness to Practise Committee would hold a meeting to consider her case on or after 1 June 2021. The notice included the charge which the panel would consider at the meeting, as well as informing Mrs Topczyklo-Evans that the panel would consider whether her fitness to practise is currently impaired as a result of that charge and, if so, whether a sanction is

required. Mrs Topczyklo-Evans was asked to provide any relevant submissions or documents for the panel by 21 May 2021.

In these circumstances, the panel was satisfied that the notice was sent more than 28 days in advance of this meeting and had been served in accordance with the Rules. Mrs Topczyklo-Evans has not requested a hearing but has provided a response for this panel to consider. As such, the panel was satisfied that it was appropriate to proceed with this meeting.

Background

Mrs Topczyklo-Evans joined the NMC register in March 2005. At the beginning of 2018 she was employed by the Aneurin Bevan University Health Board as a band 7 nurse. Mrs Topczyklo-Evans also did agency work.

On 23 February 2018 Mrs Topczyklo-Evans contacted the Royal College of Nursing ('RCN') and obtained advice from them regarding doing agency work while on sick leave. Mrs Topczyklo-Evans was advised that this could lead to disciplinary action and that she should not do this without first getting authorisation from her manager.

On 9 March 2018 Mrs Topczyklo-Evans began an extended period of sickness absence from her substantive post. Mrs Topczyklo-Evans remained on sick leave until August 2018, and then again in November 2018. She resigned from her substantive role in December 2018.

During the course of her sick leave, Mrs Topczyklo-Evans provided notes from her local GP which stated that she was unfit to work. She also continued to receive her salary from the Aneurin Bevan Health Board.

However, during the time that Mrs Topczyklo-Evans was on sick leave from her substantive role, she completed 53 shifts for other organisations including a private nursing agency, private nursing homes and bank shifts for other NHS Health Boards.

The agency became aware of this but Mrs Topczyklo-Evans allegedly informed them that she had been advised by the RCN that there was no difficulty with what she was doing.

The matter came to light in July 2018 when Mrs Topczyklo-Evans' line manager became concerned because she was receiving a high volume of employment references for Mrs Topczyklo-Evans, and then received a telephone call from the manager of one of the nursing homes, enquiring about whether Aneurin Bevan Health Board staff who were on sick leave were allowed to work elsewhere.

In total, Mrs Topczyklo-Evans earned £13187.49 from the agency work, in addition to the salary she received from the Aneurin Bevan Health Board while she was on sick leave. The net loss to the Aneurin Bevan Health Board, which included the sick pay as well as tax, national insurance and pension contributions, was £18877.36.

Mrs Topczyklo-Evans was interviewed by the police on 2 April 2019. In this interview she accepted that she had been in receipt of full sick pay from the Health Board and had been working as an agency nurse continuously throughout that time. However, she claimed that she had no knowledge of the Aneurin Health Board's sickness absence policy, and that the RCN had advised her that there was no issue with her doing agency work while on sick leave.

Mrs Topczyklo-Evans appeared at Merthyr Tydfil Magistrates Court on 4 November 2019. She pleaded guilty to fraud contrary to sections 1 and 3 of the Fraud Act 2006. She was sentenced on 2 December 2019 and received an 8 month custodial sentence.

Decision on the findings on facts and reasons

The panel had regard to Rule 31(2) and (3) which state that:

(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.*

Within the documents before the panel was a certificate of conviction which confirmed that on 4 November 2019 Mrs Topczyklo-Evans was convicted of fraud contrary to sections 1 and 3 of the Fraud Act 2006.

Having regard to this evidence and Rule 31(2), the panel found the charge proved.

Decision on impairment

The panel next went on to decide if Mrs Topczyklo-Evans' fitness to practise is currently impaired as a result of her conviction.

In this regard the panel considered the test approved of by Mrs Justice Cox in the case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin) at paragraph 76:

'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. ...

- 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 satisfied that Mrs Topczyklo-Evans' conviction breached limbs (b), (c) and (d) of this test. Fraud is, by its nature, a dishonest act which breaches the fundamental nursing tenets of honesty and integrity. Mrs Topczyklo-Evans' conviction and subsequent custodial sentence have also brought the profession into disrepute.

The panel was satisfied that this was not a case that gave rise to public protection concerns, either in the past or going forwards. The issue the panel therefore had to consider was whether a finding of current impairment was required on public interest grounds.

The panel noted that dishonesty is inherently difficult to remediate. Although Mrs Topczyklo-Evans has expressed remorse for her behaviour, the panel considered that she has demonstrated limited insight. In emails to the NMC, dated 16 January 2021, 15 February 2021 and 27 April 2021, Mrs Topczyklo-Evans seeks to explain her actions and states that she used the money to support her family rather than on any "lavish lifestyle". The panel considered that Mrs Topczyklo-Evans was still trying to justify and mitigate her actions, rather than accept responsibility for them. The panel considered that Mrs Topczyklo-Evans has demonstrated limited insight into the impact of her offending behaviour on her employer, her patients, the reputation of the nursing profession, or public confidence in the profession.

The panel also bore in mind that honesty and integrity are fundamental tenets of the nursing profession, and that the public must be able to trust nurses. Mrs Topczyklo-Evans abused the trust of her employer for her own gain, in a planned and prolonged course of action which she had been advised against. This resulted in a criminal conviction and custodial sentence. The panel took the view that public confidence in the profession would be undermined if Mrs Topczyklo-Evans was allowed to continue to practise unrestricted in these circumstances. The panel therefore decided that a finding of current impairment was required on public interest grounds, in order to uphold proper professional standards of conduct and behaviour, and maintain public confidence.

Determination on sanction

The panel considered this case and decided to make a striking-off order.

In reaching this decision, the panel had regard to all the evidence that it had read in this case, as well as the Sanctions Guidance published by the NMC. The panel bore 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 noted that the NMC had proposed that a striking-off order would be the appropriate and proportionate sanction. However, the panel reminded itself that the decision on sanction was a matter for the panel, exercising its own independent judgement.

The panel considered that the aggravating factors in this case were:

- Mrs Topczyklo-Evans breached the trust of her employer for her own financial gain;
- Mrs Topczyklo-Evans' criminal offence was so serious that it warranted the imposition of an immediate custodial sentence;
- The offending behaviour took place over an extended period of time;
- The conduct leading to the conviction related to Mrs Topczyklo-Evans' employment as a registered nurse;

- Mrs Topczyklo-Evans has demonstrated limited insight.

The panel identified no mitigating factors. It recognised that Mrs Topczyklo-Evans has shown remorse but it did not consider that this mitigated the seriousness of her conviction.

The panel first considered whether to take no action but concluded that this would be inappropriate. Taking no further action would be insufficient to uphold professional standards and maintain public confidence. 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 Sanctions Guidance, 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 had regard to the aggravating factors and concluded that this case was not at the lower end of the spectrum. A caution order would therefore 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 then moved on to consider a conditions of practice order but concluded that, given the nature of this case, this would be a wholly unsuitable sanction. It would not be possible to formulate conditions to address Mrs Topczyklo-Evans' conviction and a conditions of practice order would be insufficient to satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that a suspension order would be appropriate where the behaviour:

'...is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):

- 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 panel bore in mind that Mrs Topczyklo-Evans has been convicted of a serious criminal offence which attracted an immediate custodial sentence. Her offending behaviour took place over a prolonged period of time, and against the advice she had obtained from her professional body. It was done for her own financial gain and the panel has found that Mrs Topczyklo-Evans has limited insight into her actions. The panel considered that all of these factors raise fundamental questions about Mrs Topczyklo-Evans' honesty and suitability to remain on the NMC register.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction and moved on to consider a striking-off order. It had regard to the following section of the Sanctions Guidance:

'Key considerations are:

- can public confidence in the professions and the NMC 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 the public interest?*

- *is the seriousness of the case incompatible with ongoing registration (see above for the factors to take into account when considering seriousness)?*

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following factors.

- *A serious departure from the relevant professional standards as set out in key standards, guidance and advice.*
- *...*
- *Abuse of position, abuse of trust, ...*
- *...*
- *...*
- *Dishonesty, especially where persistent or covered up...*
- *Persistent lack of insight into seriousness of actions or consequences.*
- *Convictions or cautions involving any of the conduct or behaviour in the above examples.'*

Mrs Topczyklo-Evans' offending behaviour was a significant and prolonged departure from the standards of honesty and integrity expected of registered nurses and, in the panel's view, is incompatible with remaining on the NMC register. Having regard to all of the circumstances of this case, the panel considered that the only sanction which would maintain public confidence in the profession, uphold professional standards, and meet the public interest was a striking-off order.

Determination on interim order

Having determined that a striking-off order was the appropriate and proportionate sanction, the panel considered whether to impose an interim order to cover the appeal period.

The panel accepted the advice of the legal assessor.

The panel bore in mind that there were no public protection concerns in this case and therefore an interim order was not necessary for the protection of the public.

It then considered whether an interim order was otherwise in the public interest. It recognised that the public interest test has a very high initial hurdle and it is only very rarely that an interim order is made on this ground alone. In the case of *R ex p Shiekh v GDC* [2007] EWHC 2972 (Admin), Davis J said that although the requirement of necessity in the rules does not strictly apply, the effect of the order was such that the bar was set high and the desirability of making an order must be close to necessity here too. He also said that cases of this sort would be "relatively rare". Compatibility with a substantive order is not a wholly irrelevant consideration but it cannot, simply of itself, justify an interim order - otherwise this would defeat the very purpose of the statutory delay of 28 days or longer to which every registrant is entitled. The panel considered that it was not in the public interest to impose an interim order at this stage, some 2.5 years after the incident which led to the striking-off order. It considered that the high hurdle had not been met in this case.

Finally, the panel considered that an interim order would not be in Mrs Topczyklo-Evans' own interests.

As none of the three grounds for imposing an interim order are made out, the panel could not impose one.

The striking-off order will therefore come into effect 28 days after Mrs Topczyklo-Evans is sent the decision of this hearing, unless she chooses to appeal.

That concludes this determination.