

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

**7 May 2021**

Virtual Hearing

<b>Name of registrant:</b>	Carlos Alexandre Da Silva Carvalho
<b>NMC PIN:</b>	10B0126C
<b>Part(s) of the register:</b>	Registered Nurse (Sub Part 1) Adult Nursing – February 2010
<b>Area of Registered Address:</b>	Devon
<b>Type of Case:</b>	Conviction
<b>Panel Members:</b>	Catrin Davies (Chair, lay member) Frances Clarke (Registrant member) June Robertson (Lay member)
<b>Legal Assessor:</b>	Peter Jennings
<b>Panel Secretary:</b>	Caroline Pringle
<b>Mr Da Silva Carvalho:</b>	Present and represented by Priya Khanna, counsel, instructed by the Royal College of Nursing
<b>Nursing and Midwifery Council:</b>	Represented by Dulcie Piff, Case Presenter
<b>Facts proved by admission:</b>	1
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Suspension order (3 months) to expire without a review in accordance with Article 29(8A)
<b>Interim Order:</b>	Not imposed

## **Details of charge**

That you, a registered nurse:

1. Were convicted on 18 February 2019 at Leicester Crown Court of five counts of theft contrary to section 1(1) of the Theft Act 1968.

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

## **Decision and reasons on application under Rule 19**

At the outset of the hearing Ms Piff indicated that it may be necessary to refer to issues relating to your health and personal family life. Ms Piff submitted that it would be appropriate to hold these parts of the hearing in private and made an application under Rule 19.

Ms Khanna indicated that she supported the application.

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.

Having heard that there may be reference to your health and personal family matters, the panel determined to hold such parts of the hearing in private. The panel was satisfied that your right to privacy and confidentiality in respect of these matters justified this course and outweighed the public interest in holding the entire hearing in public.

## **Background**

You first joined the NMC register on 18 February 2010. You self-referred to the NMC on 23 May 2019. At the relevant time you were working for Norfolk and Norwich University Hospitals NHS Foundation Trust via Your World Nursing Agency.

On separate occasions between January and May 2018 you entered into finance agreements in relation to five vehicles in the UK. You drove these vehicles to Portugal in breach of these finance agreements and left them there, thereby removing them from the jurisdiction of the finance agreements.

On 18 February 2019 you appeared at Leicester Crown Court and pleaded guilty to five counts of theft contrary to section 1(1) of the Theft Act 1968.

You were sentenced on 21 May 2019. The sentence was 15 months imprisonment, suspended for 12 months, 175 hours of unpaid work and a £1000 costs order. You have fulfilled this sentence and assisted the relevant authorities to repatriate the vehicles.

## **Admission to the charge**

At the start of the hearing you admitted charge 1. The panel therefore announced the charge as proved by way of your admission.

## **Submissions on impairment**

The panel then moved on to consider whether 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 it as a registrant's suitability to remain on the register unrestricted.

Ms Piff, on behalf of the NMC, referred the panel to *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* ('the Code') and submitted that your actions had breached a number of these provisions. Ms Piff further referred the panel to the case of *CHRE v (1) NMC (2) Grant* [2011] EWHC 927 (Admin). She

accepted that there were no public protection concerns in this case but submitted that a finding of current impairment was required on public interest grounds in order to maintain public confidence in the profession and the NMC as a regulator.

Ms Khanna, on your behalf, submitted that your fitness to practise is not currently impaired. Ms Khanna recognised that dishonesty is difficult to remediate, but submitted that you have done so. Ms Khanna referred to the fact that you have completed your criminal sentence and co-operated with the relevant authorities to return the vehicles to the UK. Ms Khanna referred the panel to the evidence regarding your health and family situation at the time, and the impact this had on your behaviour. She submitted that your offending was out of character and referred the panel to the numerous testimonials which spoke highly of your practice and integrity. Ms Khanna submitted that your reflective piece demonstrated developed insight and you have been open and honest with your employers regarding both the criminal and the NMC proceedings. In these circumstances, Ms Khanna submitted that any risk of repetition was negligible and that a finding of current impairment is not required.

### **Decision on impairment**

In reaching its decision on impairment, the panel took account of all of the evidence it had received, together with the submissions made by Ms Piff and Ms Khanna. It also accepted the advice of the legal assessor.

The panel considered the test adopted by Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) at paragraph 76:

*'Do our findings of fact in respect of the [doctor's] ... conviction, ...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 satisfied that this was not a case which gave rise to public protection concerns. However, honesty and integrity are fundamental tenets of the nursing profession and theft is an inherently dishonest act. The panel was therefore satisfied that your conviction engaged limbs (b), (c) and (d) of *Grant*.

It then moved on to consider whether you are likely to act dishonestly in the future, so as to breach fundamental tenets of the nursing profession and bring the profession into disrepute. The panel had regard to your written reflection. It accepted your explanation that, at the time, you were going through difficult personal circumstances. [PRIVATE]. It also had regard to the testimonials from various nursing and medical colleagues which attested to your practice and integrity. The panel was therefore satisfied that the behaviour which led to your convictions occurred in the context of unusual and specific personal circumstances and was highly out of character for you.

The panel took account of the fact that you pleaded guilty to the criminal charges and co-operated with the relevant authorities to return the vehicles to the UK. You also completed the requirement of 175 hours of unpaid work within three months of your sentencing date. You have been open and honest about your convictions and these NMC proceedings with your employer.

The panel considered that your written reflection showed a developed level of insight and demonstrated a good level of understanding of the impact of your actions on others, including the leasing companies, your family, and colleagues. You have also demonstrated considerable remorse.

In considering the three questions posed by Silber J in *Cohen v GMC* [2008] EWHC 581 (Admin), the panel bore in mind that dishonesty is inherently difficult to remediate. However, it considered that you had done everything that you realistically could to remediate your dishonesty and convictions. The panel was therefore of the view that you are highly unlikely to repeat any similar behaviour in the future.

However, the panel also bore in mind that part of its role is to uphold the 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. Honesty and integrity are of fundamental importance to the nursing profession and if a nurse has been convicted of dishonesty this will always have the potential to impact upon the reputation of the profession and public confidence. Notwithstanding the mitigation in your case, your convictions were for serious offences and attracted a custodial sentence. In light of this, the panel considered that it was necessary to make a finding of current impairment on public interest grounds, to declare and uphold the standards of behaviour expected of the nursing profession, and to maintain public confidence in the profession and in the NMC as a regulator.

For these reasons the panel was satisfied that your fitness to practise is currently impaired on public interest grounds.

### **Determination on sanction**

Following careful consideration, the panel decided to make a suspension order for three months, to expire without a review. The effect of this order is that, for three months from the date on which the order takes effect, your registration on the NMC register will be

suspended. After this three month period, the suspension order will expire and you will be able to return to unrestricted practice.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case, together with the submissions made by Ms Piff and Ms Khanna.

In her submissions, Ms Piff suggested a number of aggravating and mitigating factors. She referred the panel to the NMC's Sanctions Guidance and submitted that the appropriate and proportionate sanction was a striking-off order. Ms Piff submitted that your dishonesty involved a degree of premeditation and sophistication and was incompatible with ongoing registration. However, she recognised that sanction remained a matter for the panel's own independent judgement, having regard to the principles of fairness and proportionality.

Ms Khanna submitted that a striking-off order would be disproportionate and invited the panel to consider a short period of suspension to mark the seriousness of your convictions. She submitted that your convictions, although serious, were not fundamentally incompatible with ongoing registration in light of all of the circumstances. She submitted that your dishonesty was not premediated or sophisticated and was, instead, a misguided and misjudged error caused by difficulties you encountered in your personal life. She submitted that you have made considerable efforts to put matters right, and that it would not be in the public interest to remove permanently you from the register.

The panel accepted the advice of the legal assessor who referred it to the NMC's Sanctions Guidance. 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 had careful regard to the Sanctions Guidance published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

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

- the value of the stolen vehicles was considerable (in the region of £75,000);
- there was a degree of sophistication to your dishonesty in that you obtained vehicles from different lease companies;
- your dishonesty occurred over a period of some five months.

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

- your convictions related to events in your private life and were unconnected to your position as a registered nurse;
- there was no risk to patient safety;
- at the time of your offending behaviour, you were experiencing difficult personal circumstances relating to your health and family;
- you have demonstrated remorse, remediation and insight;
- several current nursing and medical colleagues have provided very positive references.

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.

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 considered that your convictions were not at the lower end of the spectrum and therefore 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 a conditions of practice order but determined that it would not be possible to formulate workable or practical conditions, given that this is a case which concerns your criminal convictions, rather than any clinical concerns.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The Sanctions Guidance indicates that this sanction may 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 considered that your behaviour, while serious, was an isolated episode of poor judgment linked to your family situation at the time. It had no evidence of any harmful or deep-seated attitudinal problems and, in fact, had numerous testimonials from your colleagues who attested to your honesty and integrity and who described your offending behaviour as being out of character. The panel had no evidence of any similar behaviour before or since the relevant time and had concluded at the impairment stage that you were highly unlikely to repeat such dishonest or criminal behaviour in the future. In reaching its decision the panel noted that you were open and honest with the criminal investigation, the NMC, your employer and your colleagues. You have also

completed your criminal sentence, including completing the unpaid work requirement within three months.

The panel was mindful that the NMC' had invited it to make a striking-off order. It considered the relevant section of the Sanctions Guidance, as well as the NMC's guidance on dishonesty. It noted that, while dishonesty is always serious, your dishonesty occurred in your private life, it did not involve a misuse of your power or position as a registered nurse, there was no direct financial gain on your part, and it was an isolated episode linked to your family situation at the time. While the panel was of the view that there was a degree of sophistication, it did not consider that it was part of any wider involvement in criminality. Furthermore, you have been open and honest with the police, the NMC and your employer and have done everything realistically possible to remediate your past failings.

Balancing all of these factors, the panel determined that a striking-off order would be disproportionate and unduly punitive. It was satisfied that public confidence and proper professional standards could be maintained by a period of suspension.

The panel therefore decided to make a suspension order for 3 months. It considered that this order was the appropriate and proportionate sanction which properly reflected the seriousness of your convictions, while also taking into account your considerable insight, remorse and remediation.

Having found that your fitness to practise is impaired on public interest grounds only, and being satisfied that you have demonstrated insight, remorse and remediation, the panel determined that a review of this order before expiry is not required. It was satisfied that the suspension order will mark the seriousness with which the profession views your behaviour and will therefore be sufficient to satisfy the public interest. It therefore decided to exercise its discretionary powers under Article 29(8A) and direct that a review of this suspension order is not required. Accordingly, the suspension order will expire, without review, at the end of the 3 month period.

### **Determination on interim order**

The panel considered whether to impose an interim order. Ms Piff submitted that the NMC was neutral on the issue of an interim order. Ms Khanna submitted that an interim order was not necessary.

The panel accepted the advice of the legal assessor.

The panel was mindful of its decision that there were no public protection concerns in this case and that it had imposed the substantive suspension order on public interest grounds alone. The panel considered that, in this case, an interim order was not necessary for the protection of the public and the high threshold for imposing an interim order on public interest grounds alone was not met.

The panel therefore decided that the substantive suspension order was sufficient to protect the public interest and an interim order was not necessary.

That concludes this determination.