

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

**Substantive Meeting  
Friday 7 January 2022**

Virtual Meeting

<b>Name of registrant:</b>	Miss Claire Louisa Thirkell
<b>NMC PIN:</b>	01D0782E
<b>Part(s) of the register:</b>	Registered Nurse - Adult (April 2004)
<b>Area of registered address:</b>	Essex
<b>Type of case:</b>	Misconduct
<b>Panel members:</b>	Bryan Hume (Chair, Lay member) Lorraine Shaw (Registrant member) Scott Handley (Lay member)
<b>Legal Assessor:</b>	Charles Parsley
<b>Hearings Coordinator:</b>	Jasmin Sandhu
<b>Facts proved:</b>	Charge 1
<b>Facts not proved:</b>	None
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	<b>Suspension order (6 months)</b>
<b>Interim order:</b>	<b>Interim suspension order (18 months)</b>

## **Details of charge**

*That you, registered nurse,*

*1. On 2 July 2019 accessed Person A's confidential information on more than one occasion without any clinical justification and/or permission.*

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

## **Decision and reasons on service of Notice of Meeting**

As this is a meeting rather than a hearing, Miss Thirkell is not able to attend. The panel was informed that Notice of Meeting had been sent to her registered email address by secure email on 30 November 2021.

The panel considered whether notice of this meeting had been served in accordance with the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (the Rules). It noted that under the recent amendments made to the Rules during the COVID-19 emergency period, a Notice of Meeting may 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 took into account that the Notice of Meeting provided details of the allegations, the '*on or after date*' of 3 January 2022, as well as the Notice of Referral (NOR) decision dated 14 September 2021 which sets out why this matter was referred to a meeting rather than a hearing.

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Thirkell has been served with reasonable notice of this meeting in accordance with the requirements of Rules 11A and 34 of Rules.

## Background

The Nursing and Midwifery Council (NMC) received a referral about Miss Thirkell's fitness to practice on 11 November 2019 from the clinical assurance lead at the Centre for Health and Disability (CHDA). At the time of the concerns raised in the referral, Miss Thirkell was working as a nurse and functional assessor at CHDA. She had been working here since August 2018.

On 20 September 2019 the CHDA received a complaint alleging that Miss Thirkell had accessed the benefit data of Person A, her former partner, in breach of data protection regulations to find out **[PRIVATE]**. It is alleged that Miss Thirkell had no clinical justification for accessing Person A's records but did so in order to **[PRIVATE]**. The CHDA investigated the matter via the Serious Complaint Investigation Team (SCIT). The IT records showed that Miss Thirkell had accessed Person A's records three times on 2 July 2019. The Medical Services Referral System (MSRS), which is used to access records, shows that Miss Thirkell took the following actions in relation to Person A's records on 2 July 2019:

- 12:14:18 – entered client screen and viewed the record for 30 seconds
- 12:14:48 – viewed medical output for 11 seconds
- 12:14:59 – selected medical report dated 28th May 2019 to view (as a PDF file, displayed within a separate browser). MSRS remained open between 12:14:59 and 12:55 without any recorded MSRS activity
- 12:55 – moved onto another case

It is alleged that on 24 August 2019, during a personal telephone call with Person A, Miss Thirkell allegedly made reference to **[PRIVATE]**. Person A recorded the telephone call and raised a complaint with CDHA on 20 September. The concerns were investigated by the SCIT, who conducted two interviews with Person A and obtained the recorded telephone call between Person A and Miss Thirkell. This allowed the SCIT to confirm, during the call, Miss Thirkell referred to **[PRIVATE]** dated 28 May 2019.

A local level investigation was carried out and disciplinary hearing was held on 31 October 2019, during which Miss Thirkell admitted to accessing the records. She said she did this to find her former partner's postcode [PRIVATE]. She said that she was [PRIVATE].

An outcome meeting was held on 7 November 2019, at which Miss Thirkell was informed of the CHDA's decision to dismiss her.

In an email to the NMC on 2 November 2020, Miss Thirkell confirmed that she was not, at the time, working as a registered nurse.

### **Decision and reasons on facts**

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the written representations made by the NMC. The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statements of the following witnesses on behalf of the NMC:

- Witness 1: Clinical Lead at CDHA
- Witness 2: Assessment Centre Manager at CDHA (at the time of events)

The panel heard and accepted the advice of the legal assessor.

The panel made the following finding:

### **Charge 1**

*'That you, registered nurse,*

1. *On 2 July 2019 accessed Person A's confidential information on more than one occasion without any clinical justification and/or permission.'*

**This charge is found proved.**

Taking into account all of the information before it, the panel was satisfied that there was sufficient evidence to find this charge proved. It had regard to the investigation report dated 10th October 2019, which contains a record showing that Miss Thirkell accessed the file system of Person A on 2 July 2019 four times:

- 12:14:18 – entered client screen and viewed the record for 30 seconds
- 12:14:48 – viewed medical output for 11 seconds
- 12:14:59 – selected medical report dated 28th May 2019 to view (as a PDF file, displayed within a separate browser). MSRS remained open between 12:14:59 and 12:55 without any recorded MSRS activity
- 12:55 – moved onto another case

The panel also took into account that although she does not formally respond to this allegation against her, Miss Thirkell, in her '*Response to regulatory concerns*' form dated 1 November 2020, accepts that she accessed the file.

On the basis of the system records provided, together with Miss Thirkell's own admission, the panel concluded that it was more likely than not that Miss Thirkell did access Person A's confidential information without any clinical justification and/or permission. This charge is therefore found proved on the balance of probabilities.

**Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Thirkell's fitness to practise is currently impaired. Whilst here is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Miss Thirkell's fitness to practise is currently impaired as a result of that misconduct.

### **Representations on misconduct and impairment**

In its written submissions, the NMC refer to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) and identify the specific, relevant provisions where it argues Miss Thirkell's conduct fell significantly short of the standards of the Code. It was submitted that Miss Thirkell's actions were a serious departure from the standards expected of a registered nurse and do amount to misconduct.

The NMC go on to refer to Dame Janet Smith's Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin) and submit that limbs (b) and (c) of this test are engaged in this case. It is accepted that no concerns have been raised about Miss Thirkell's clinical practice and therefore there are no public protection concerns arising from her actions. The NMC submit that Miss Thirkell has breached fundamental tenets of the profession and has brought the reputation of the profession into disrepute.

In considering whether Miss Thirkell is currently impaired, the NMC point to the relevant factors identified in the case of *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin). It is stated that the concerns are attitudinal ones which are less easy to remediate (as per NMC guidance FTP-3a and 3c), however are capable of remediation through reflection and training. The NMC submit that Miss Thirkell has not

meaningfully engaged with the NMC proceedings or provided reflective work. Furthermore, she has not worked as a nurse since the incident. In light of all of the above, the NMC submit that there is a risk of repetition.

Whilst Miss Thirkell's actions do not relate to her clinical practice and do not raise public protection concerns, the NMC argue they are so serious that a finding of current impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards. The NMC therefore submit that Miss Thirkell's fitness to practise is impaired on public interest grounds.

The panel accepted the advice of the legal assessor which included reference to the case of *Roylance v General Medical Council* (No. 2) [2000] 1 AC 311.

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel found that Miss Thirkell's actions did amount to a breach of the Code. Specifically:

### **'5 *Respect people's right to privacy and confidentiality***

*As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.*

*To achieve this you must:*

*5.1 Respect a person's right to privacy in all aspects of their care*

*5.2 make sure that people are informed about how and why information is used and shared by those who will be providing care'*

### **'20 *Uphold the reputation of your profession at all times***

*To achieve this, you must, as appropriate:*

*20.1 keep to and uphold the standards and values set out in the Code*

*20.2 act with honesty and integrity at all time, treating people fairly and without discrimination, bullying or harassment*

*20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*

*20.4 keep to the laws of the country in which you are practising*

*20.6 stay objective and have clear professional boundaries at all times...'*

Whilst the panel appreciated that breaches of the Code do not automatically result in a finding of misconduct, it considered that Miss Thirkell's actions as found proved fell seriously short of the conduct and standards expected of a registered nurse and were sufficiently serious to amount to misconduct.

The panel did not accept that in opening a record containing the **[PRIVATE]**, Miss Thirkell's motivation was solely to obtain Person A's postcode, but rather to secure information with a view to **[PRIVATE]**. The panel was of the view that this is a deplorable breach of Miss Thirkell's duty of confidentiality and as such, it was satisfied that she was her actions amount to serious misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, Miss Thirkell's fitness to practise is currently impaired.

The panel noted that 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. 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) ...'*

The panel finds that the first three limbs are engaged in this case. It considered that whilst these concerns are not clinical ones in the context of patient care, by accessing their confidential records without permission, Miss Thirkell's actions put Person A at an unwarranted risk of harm as this had the potential to **[PRIVATE]**. The panel also determined that Miss Thirkell breached fundamental tenets of the profession and has brought the reputation of the profession into disrepute. It considered that Miss Thirkell abused her position of trust and failed to act with integrity and professionalism.

In relation to whether Miss Thirkell is currently impaired by reason of her misconduct, the panel had regard to the case of *Cohen v General Medical Council*, in which the court set

out three matters which it described as being '*highly relevant*' to the determination of the question of current impairment:

- (a) Whether the conduct that led to the charge(s) is easily remediable?*
- (b) Whether it has been remedied?*
- (c) Whether it is highly unlikely to be repeated?'*

The panel bore in mind that the concerns in this case relate to Miss Thirkell's professionalism and integrity, and as a result, are not easy to remediate. Whilst not easily remediable, the panel was satisfied that Miss Thirkell's conduct is capable of remediation.

However, taking into account all of the information before it, the panel was of the view that Miss Thirkell has not taken steps to address the regulatory concerns in this case. It noted that she has limited engagement with NMC and has not provided a reflective piece. There is no evidence that she has developed any insight into the seriousness of her misconduct and understands the impact it has on the reputation of the profession. Whilst Miss Thirkell did eventually accept that she accessed Person A's file, the panel bore in mind that this admission was only partial and that she initially denied this fact during the local level investigation and does not acknowledge the aspect of her motivation in **[PRIVATE]**. Furthermore, there is no evidence to suggest that Miss Thirkell has practised since being dismissed in November 2019 or has completed any training to remedy the concerns in her practice. In light of all of the above, the panel concluded that there is a risk of repetition in this case.

Whilst these concerns do not relate to patient care, the panel considered that Miss Thirkell's actions had the potential to cause serious psychological damage to Person A. As such, the panel concluded that a finding of current impairment was required to protect the public.

The panel also concluded that a finding of current impairment was necessary on public interest grounds. It was the view of the panel that Miss Thirkell's conduct was so serious that a finding of current impairment is required in order to maintain public confidence in the profession and to uphold proper professional standards.

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 6 months. The effect of this order is that the NMC register will show that Miss Thirkell's registration has been suspended.

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.

## **Representations on sanction**

In its written submissions, the NMC invited the panel to consider a 3-month suspension order with a review. The NMC refer the panel to SAN-3d of the SG and submit that a suspension order is appropriate because the conduct is serious enough to require temporary removal from the register. The NMC go on to submit that although Miss Thirkell has not demonstrated full remorse or insight, there is no evidence of harmful deep-seated personality or attitudinal problems and no evidence of repetition of behaviour since the incident. It is submitted that a 3-month period of suspension with a review will mark the seriousness of Miss Thirkell's misconduct and uphold the public interest. It will further allow Miss Thirkell time to engage further with the NMC and reflect on her actions.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on sanction**

Having found Miss Thirkell'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:

- Limited engagement with the NMC;
- Lack of insight or remediation;
- Abuse of position of trust for a personal gain.

The panel also took into account the following mitigating feature:

- Miss Thirkell was going through difficult personal circumstances and **[PRIVATE]** at the time.

The panel first considered whether to take no action or to impose a caution order but concluded that this would be inappropriate in view of the ongoing public protection and public interest issues identified. The panel decided that an order which does not restrict Miss Thirkell's practice in some way would not mitigate the ongoing risk in this case.

The panel next considered whether placing conditions of practice would be a sufficient and appropriate response. The panel took into account the SG and was mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel noted that the concerns in this case relate to Miss Thirkell's professionalism and integrity and therefore would be difficult to address with conditions. The panel also bore in mind that Miss Thirkell has not shown a willingness to fully engage with the NMC, develop insight into the failings in her practice, or taken steps to remedy her practice. The panel therefore determined that a conditions of practice order was not workable or appropriate as it was not satisfied that if it were to impose conditions, that Miss Thirkell would comply with them.

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

The panel was of the view that a suspension order would be the appropriate and proportionate sanction. It bore in mind the seriousness of the concerns in this case, that being, abusing a position of trust for personal gain. Although there is some evidence of attitudinal problems, the panel considered that a suspension order would both adequately protect the public and satisfy the public interest. The panel noted the hardship such an order will inevitably cause Miss Thirkell but considered that this is outweighed by the public interest in this case. The panel took the view that this order is 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.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Miss Thirkell case to impose a striking-off order.

The panel determined that a suspension order for a period of 6 months was sufficient to allow Miss Thirkell time to address the regulatory concerns in this case and engage with the NMC.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Miss Thirkell's attendance at the next hearing
- A reflective piece which addresses the impact of her actions on Person A, her employer at the time, and the nursing profession

- Any testimonials or references from her employer, whether in paid or voluntary employment
- Any evidence of training undertaken by Miss Thirkell, specifically in relation to professionalism, respect, and integrity

This will be confirmed to Miss Thirkell in writing.

### **Interim order**

As the suspension 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 Thirkell's own interests until the suspension sanction takes effect.

### **Representations on interim order**

The panel took account of the representations made by the NMC that an interim suspension order is appropriate as this would be consistent with the sanction imposed by the panel and would address concerns previously identified. The NMC propose a period of 18 months in order to cover any possible appeal period.

### **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. 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 suspension order. The panel therefore imposed an interim suspension order for a period of 18 months to allow sufficient time for an appeal to be made should Miss Thirkell wish to make one.

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

That concludes this determination.