

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

**Substantive Meeting
29 March 2022**

Virtual Hearing

Name of registrant: Leanne Wallace

NMC PIN: 18K0158E

Part(s) of the register: Registered Nurse – Adult Nursing

Area of registered address: Cleveland

Type of case: Conviction

Panel members: John Penhale (Chair – Lay member)
Janet Fisher (Lay member)
Carol Porteous (Registrant member)

Legal Assessor: Attracta Wilson

Hearings Coordinator: Vicky Green

Facts proved: Charges 1, 2, 3 and 4

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 was informed at the start of this meeting that Ms Wallace was not in attendance and that the Notice of Meeting (the Notice) had been sent to her registered address by recorded delivery and by first class post on 25 February 2022.

The panel took into account that the Notice provided details of the allegations, that the meeting will take place on or after 25 March 2022 and the nature of the meeting.

The panel accepted the advice of the Legal Assessor.

In the light of all of the information available, the panel was satisfied that Ms Wallace has been served with the Notice 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).

Having had sight of the charges and all of the evidence in this case, the panel was satisfied that it was appropriate for this case to be considered by way of a meeting.

Details of charge

That you, a registered nurse, on 18 October 2021 at Teesside Magistrates Court, were convicted of:

1. On 12/07/2020 at Hartlepool, committed fraud in that, while occupying a position, namely nurse, in which you were expected to safeguard, or not to act against, the financial interests of [Patient A], you dishonestly abused that position intending thereby to make a gain, namely wallpaper, for yourself contrary to sections 1 and 4 of the Fraud Act 2006.
2. On 12/07/2020 at Hartlepool, committed fraud in that, while occupying a position, namely nurse, in which you were expected to safeguard, or not to act against, the financial interests of [Patient A], you dishonestly abused that position intending thereby to make a

gain, namely items from Amazon, for yourself contrary to sections 1 and 4 of the Fraud Act 2006.

3. On 13/07/2020 at Hartlepool, committed fraud in that, while occupying a position, namely nurse, in which you were expected to safeguard, or not to act against, the financial interests of [Patient A], you dishonestly abused that position intending thereby to make a gain, namely home items, for yourself contrary to sections 1 and 4 of the Fraud Act 2006.

4. On 13/07/2020 at Hartlepool committed fraud in that, while occupying a position, namely nurse, in which you were expected to safeguard, or not to act against, the financial interests of [Patient A], you dishonestly abused that position intending thereby to make a gain, namely pay off an outstanding loan, for yourself contrary to sections 1 and 4 of the Fraud Act 2006.

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

Background as set out in the transcript of the sentencing remarks

The panel had sight of the transcript of the sentencing date 18 November 2021 in which the Judge made the following remarks:

'Friday 3 July 2020, [Patient A] was admitted to ward 27 of North Tees Hospital. He was in very poor health. His family would have visited him a great deal more except that COVID-19 regulations reduced their ability to be with him.

Whilst he's there, one of his sons saw a message on his phone from his bank indicating possible fraudulent activity. He dismissed it as probable spam.

Two days later he was transferred to a hospice, and he there spent his last few hours dying on the 16th. But during that time when he sons spending time with the

last surviving parent saw that more than £1,700 had been spent from their father's bank account during the time he had been in hospital.

They investigated it themselves and they investigated it very well. They had revealed the crime within days and it is sadness, therefore, that it takes quite so long to get the matter to this court. But they had revealed quickly that £699 had been spent on a bed from Home Living and so they simply called Home Living, discovered that the purchaser was Leanne Wallace and made another enquiry and quickly discovered that you were a nurse on the ward where their father had been cared for. You in fact had used his debit card to pay £900 towards a personal loan, having tried one of his other cards first and having failed used a different one. You placed then this order for a £699 bed and then smaller sums were spent with a wallpaper supplier and with Amazon. The contract with the bed supplier was cancelled because you tried to chase the delivery of the bed and they began to fear that it might be fraudulent.

When you were asked about this, you tried to hide your guilt claiming was a generous man who had offered to pay off your loan, the bed was for him and the purchases from Amazon, one was for his benefit. The wallpaper, you suggested, might have been his choice not being to your taste and he had merely had it delivered to your home. But the reality was you were simply trying to hide your guilt. You'd wiped the memory of your phone and any other electronic evidence to try to ensure that you would not be discovered, having died. This was an appalling abuse of trust.

I've seen a photograph of and I imagine you can remember him too. He was really not in any fit state to do anything for himself, barely able to communicate. There was no possibility of him ever giving permission or consent to the use of his bank accounts. He was simply a vulnerable victim and, yet, you persisted in this claim for a while that he had generously wanted to assist you. If he had had such generosity of spirit, he could never have possibly expressed it. You had simply stolen from

him, in effect, and it was persistent I think there were five transactions, two of them with Amazon on the same day and therefore featuring as four charges. It occurred over the course of two days. It persisted even after one of his cards failed and you had to use another. The harm in purely financial terms I relatively small and I agree with the lawyers that in financial terms it would be in category 5, but that really ignores the true harm because your behaviour was entirely selfish. It was not one single act but many.'

Decision and reasons on facts

The charges concern Ms Wallace'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).

Fitness to practise

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

Decision and reasons on impairment

The panel next went on to decide if as a result of the convictions, Ms Wallace'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. 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, 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 determined that all four limbs were engaged in this case.

The panel found that Patient A, and particularly his family, were caused extreme emotional harm as a result of Ms Wallace's fraudulent actions which occurred as a result of abuse of her position of trust. In stealing from Patient A, who was a vulnerable and terminal patient, Ms Wallace caused distress to his family who were already distressed and grieving in his final hours and after he passed away.

The panel found Ms Wallace's actions were egregious and breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty and fraud extremely serious.

Regarding insight, the panel noted that Ms Wallace made some admissions and entered guilty pleas, but noted the following sentencing remarks of HHJ Crowson:

'When you were asked about this, you tried to hide your guilt claiming was a generous man who had offered to pay off your loan, the bed was for him and the purchases from Amazon, one was for his benefit. The wallpaper, you suggested, might have been his choice not being to your taste and he had merely had it delivered to your home. But the reality was you were simply trying to hide your guilt. You'd wiped the memory of your phone and any other electronic evidence to try to ensure that you would not be discovered, having died. This was an appalling abuse of trust.'

The panel found that Ms Wallace's insight was limited, she initially attempted to conceal her guilt and justify her fraudulent actions.

The panel considered whether Ms Wallace's fraudulent actions and consequent convictions were capable of remediation. The panel determined that Ms Wallace's actions were truly egregious and demonstrative of a deep-seated and attitudinal problem. The panel considered that charges relating to an abuse of a position of trust, fraud and dishonesty are inherently difficult to remediate.

The panel is of the view that there is a risk of repetition based on Ms Wallace's lack of insight and the deep-seated and attitudinal concerns identified. 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 Ms Wallace abused her position of trust to steal from a dying patient in her care, further exacerbated by her dishonesty after he had died to prevent her dishonesty being discovered. The panel considered that a member of the public would be appalled by Ms Wallace's behaviour and that public confidence in the profession would be seriously undermined if a finding of impairment was not found on this ground. The panel therefore determined that a finding of impairment on public interest grounds was required.

Having regard to all of the above, the panel was satisfied that Ms Wallace'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 Ms Wallace off the register. The effect of this order is that the NMC register will show that Ms Wallace 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 Ms Wallace'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. 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 fraud and dishonesty was premeditated and systematic.
- Ms Wallace abused her position of power and trust for personal gain.
- Patient A was a vulnerable patient who was dying.
- Ms Wallace's breach of trust and dishonesty caused emotional harm and distress.
- Ms Wallace has a lack of insight into her actions and attempted to cover up her fraudulent actions.

The panel found no mitigating features in this case.

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 and nature of the case, and the public protection issues identified, an order that does not restrict Ms Wallace'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 Ms Wallace's misconduct was 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 Ms Wallace'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 conduct identified in this case was not something that can be addressed through retraining given the deep-seated personality and attitudinal problems identified in this case. Furthermore, the panel concluded that the placing of conditions on Ms Wallace'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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

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 Ms Wallace'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?*

Ms Wallace'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 Ms

Wallace'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 effect of Ms Wallace's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this 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.

Decision and reasons on 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 Ms Wallace's own interest until the striking-off sanction takes effect.

The panel 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 due to cover the appeal period.

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

That concludes this determination.

This will be confirmed to Ms Wallace in writing.