

# Nursing and Midwifery Council Fitness to Practise Committee

## Substantive Meeting 20-21 October 2022

Virtual Meeting

<b>Name of registrant:</b>	Pip Orchard
<b>NMC PIN:</b>	13G1654E
<b>Part(s) of the register:</b>	Nursing – Sub part 1 RNC: Registered Nurse – Children (2 August 2013)
<b>Relevant Location:</b>	Guernsey
<b>Type of case:</b>	Conviction
<b>Panel members:</b>	Yvonne O'Connor (Chair, registrant member) Richard Weydert-Jacquard (Registrant member) Keith Murray (Lay member)
<b>Legal Assessor:</b>	Jayne Salt
<b>Hearings Coordinator:</b>	Amira Ahmed
<b>Facts proved:</b>	All
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim order:</b>	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 the Notice of Meeting had been sent to Mr Orchard's registered email address on 15 September 2022. The Notice of Meeting was then sent to his registered address by recorded delivery and by first class post on 20 September 2022 as well as to another address in Guernsey.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and venue of the meeting.

In the light of all of the information available, the panel was satisfied that Mr Orchard 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).

The panel noted that the Rules do not require proof of receipt of delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

## **Details of charge**

That you, a registered nurse:

1) At the Royal Court in the Island of Guernsey, were convicted of the following offences:

a) On or about the 18th day of August 2020, being knowingly concerned in the fraudulent evasion of the prohibition of the importation of goods, namely Cocaine, a controlled drug of Class A.

b) On or about the 25th day of August 2020, being knowingly concerned in the fraudulent evasion of the prohibition of the importation of goods, namely Alprazolam, a controlled drug of Class C.

c) On or about the 1st day of September 2020, being knowingly concerned in the fraudulent evasion of the prohibition of the importation of goods, namely Alprazolam, a controlled drug of Class C.

d) On 5th day of December 2020, driving in a manner dangerous to the public.

e) On 5th day of December 2020, driving a motor vehicle having consumed excess alcohol.

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

## **Background**

On 18 March 2021, Mr Orchard attended Guernsey Crown Court, via video link, having been charged with numerous criminal offences. Mr Orchard pleaded guilty to the following offences:

- Importation of 2.95 grams of cocaine (a Class A drug) on or about 18 August 2020;
- Importation of 15 tablets of alprazolam (a Class C drug) on or about 25 August 2020;
- Importation of 15 tablets of alprazolam on or about 1 September 2020;
- Dangerous driving on 5 December 2020; and
- Driving having consumed excess alcohol on 5 December 2020.

On 4 May 2021, Mr Orchard appeared before the Judge of the Royal Court for sentencing. Mr Orchard was sentenced to two years and six month's imprisonment in relation to the importation of cocaine. Further, Mr Orchard received a concurrent sentence of three months' imprisonment in relation to each of the two Class C matters. In relation to the driving offences, he was sentenced to six months' imprisonment for each of the two offences; these terms of imprisonment were concurrent to each other but consecutive to the sentence for the drugs matters. As such, the total sentence of imprisonment was three years.

## **Decision and reasons on facts**

The panel took account of Rule 10 (2) and were satisfied that this case should be heard as a meeting rather than a hearing. It accepted that there is no material dispute on the facts as this is a conviction case.

The charges concern Mr Orchard's conviction and, having been provided with a copy of the memorandum 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.'*

## **Fitness to practise**

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Orchard's fitness to practise is currently impaired by reason of his conviction. 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.

The NMC requires the panel to bear in mind its overarching objective to protect the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory

body. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The panel accepted the advice of the legal assessor.

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

The panel next went on to decide if as a result of the conviction, Mr Orchard'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. 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/their fitness to practise is impaired in the sense that S/He/They:*

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) ...

The panel finds that Mr Orchard's conviction has 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 such a conviction serious.

The panel noted that Mr Orchard has provided no evidence to suggest that he has taken any steps to remediate his conduct. It also noted his lack of engagement with the NMC and that he has provided no insight into his actions. It therefore determined that there is a high risk of repetition and further damage to the reputation of the profession. The panel bore in mind 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 because public confidence in the profession would be significantly undermined if a finding of impairment were not made in this case and consequently finds Mr Orchard's fitness to practise impaired on these grounds.

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

### **Representations on sanction**

The panel noted that the NMC had notified Mr Orchard in the Notice of Hearing that it would seek the imposition of a striking off order if the panel found Mr Orchard's fitness to practise currently impaired.

### **Decision and reasons on sanction**

Having found Mr Orchard's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore in mind that any sanction it was to impose must be appropriate and proportionate. Furthermore, though sanctions are not intended to be punitive they can have such an effect. 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 during these proceedings the following aggravating features:

- Mr Orchard's serious criminal offence
- Mr Orchard was convicted of more than one offence
- Mr Orchard has demonstrated no insight, has not apologised for his actions and has shown no understanding or recognition of the impact his actions could have had on the nursing profession.

The panel noted that Mr Orchard had admitted the charges at Court.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the criminal convictions. 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 this would not sufficiently mark the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order due to the serious nature of Mr Orchard's criminal convictions.

The panel next considered whether placing conditions of practice on Mr Orchard's registration would be a sufficient and appropriate response. The panel noted that there is no evidence of incompetence or identifiable areas of nursing practice requiring assessment or retraining and therefore concluded there are no practical or workable conditions that could be formulated, given the nature of criminal convictions in this case. Furthermore, the panel concluded that the placing of conditions on Mr Orchard's registration would not adequately address the seriousness of the criminal convictions.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel noted the SG in relation to a suspension order. It noted that Mr Orchard's criminal convictions are for serious offences. A suspension order would not be sufficient to mark the seriousness of Mr Orchard's actions. The panel determined that Mr Orchard's course of conduct over a three month period was deceitful and undermined his trustworthiness entirely. It concluded that if he were to stay on the register, this would risk substantially undermining public confidence in the profession, given the nature of the conviction.

The panel therefore 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?*

Mr Orchard's conviction was a significant departure from the standards expected of a registered nurse and resulted in a three-year custodial sentence. The conduct and behaviours displayed are extremely serious and are regarded as being fundamentally incompatible with him remaining on the register. The panel was of the view that to allow Mr Orchard to continue practising as a nurse 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 Mr Orchard's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself 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.

This will be confirmed to Mr Orchard 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 Mr Orchard's own interest until the striking-off sanction takes effect.

The panel accepted the advice of the legal assessor.

## **Decision and reasons on interim order**

The panel decided 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.

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

That concludes this determination.