

Nursing and Midwifery Council Fitness to Practise Committee

**Substantive Meeting
Monday 1 August 2022**

Virtual Meeting

Name of registrant:	Alan John Tobin
NMC PIN:	08H1056E
Part(s) of the register:	Registered Nurse – Mental Health Nursing (21 September 2009)
Relevant Location:	Liverpool
Type of case:	Conviction
Panel members:	Anthony Griffin (Chair, lay member) Tracey Chamberlain (Registrant member) Kathryn Smith (Registrant member)
Legal Assessor:	Ian Ashford-Thom
Hearings Coordinator:	Alice Byron
Facts proved:	Charge 1 in its entirety
Facts not proved:	N/A
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 neither Mr Tobin nor a Case Presenter on behalf of the NMC were in attendance and that the Notice of Meeting had been sent to Mr Tobin's registered address by recorded delivery and by first class post on 30 June 2022.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Mr Tobin's registered address. It was signed for against the printed name of 'J Tobin'.

The panel took into account that the Notice of Meeting provided details of the allegations, and the first possible date this meeting would be held, being 25 July 2022.

The legal assessor outlined for the panel that Rules 11A of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' stipulates that:

'Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.'

He outlined that the requisite 28 notice period had not been strictly complied with in this instance. He invited the panel to consider the principles outlined in the case of *R v Ashton, Draz & O'Reilly* [2006] EWCA Crim 794, which outlines what the panel should consider when a minor irregularity in an area such as the service of notice could preclude a panel from continuing to exercise its function. He invited the panel to consider the interests of justice and the potential prejudice to either Mr Tobin or the NMC when making this decision.

The panel accepted the advice of the legal assessor.

The panel determined that it would be in the interests of justice to continue with this meeting today. It did not consider that there has been any prejudice to either Mr Tobin or the NMC in any event, and was mindful that more than 28 days has expired since the

notice of meeting was served on Mr Tobin, therefore concluded that there could be no prejudice in continuing with the meeting today.

Details of charge

That you, a registered nurse:

1. Were convicted on 20 January 2021 of ;
 - a) Two counts of conspiracy to supply controlled drug – Class A
 - b) Two counts of conspiracy to supply controlled drug – Class B

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

Decision and reasons on facts

The charges concern Mr Tobin's conviction and, having been provided with a copy of the certificate of conviction, dated 20 May 2021, 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.'*

Background

The charges arose whilst Mr Tobin was employed as a registered nurse by Mersey Care NHS Foundation Trust.

On 9 September 2020, Mr Tobin was arrested after Cheshire Police executed search warrants at various properties, following an 18-month investigation into an organised crime group responsible for supplying Class A and Class B drugs throughout England and Scotland.

Mr Tobin entered a guilty plea to the charges, and on 20 January 2021 he was convicted of conspiracy to supply Class A and Class B drugs, as detailed in the charge above.

On 20 April 2021, at Liverpool Crown Court, Mr Tobin was sentenced to 20 years imprisonment, with one additional sentence of 20 years imprisonment and two additional sentences of 10 years imprisonment to run concurrently.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mr Tobin'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.

Representations on impairment

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 has referred to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

In the completed Case Management Form, dated 11 May 2022, Mr Tobin made admissions to the charge, and admitted that his fitness to practise is currently impaired by reason of his conviction.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *CHRE v NMC and Grant* and *Ronald Jack Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Decision and reasons on impairment

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

- 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; [...]*

The panel bore in mind that there was no evidence before it of any clinical concerns, or actual physical or emotional harm caused to patients by Mr Tobin’s conviction. However, the panel finds that patients and the public at large were put at risk of physical and emotional harm as a result of the conduct which led to Mr Tobin’s conviction as a result the inherent risk of the illegal Class A and Class B drugs which Mr Tobin supplied throughout England and Scotland, alongside Mr Tobin’s participation in organised crime and gang activity.

The panel considered that Mr Tobin’s conduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It had regard to the terms of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015’ (“the Code”), and concluded that Mr Tobin had breached the following areas of the Code:

‘20 Uphold the reputation of your profession at all times

To achieve this you must:

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

20.2 act with honesty and integrity at all times [...]

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'

The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to Mr Tobin's conviction extremely serious.

Regarding insight, the panel considered that Mr Tobin entered a guilty plea at the Crown Court. Mr Tobin has engaged with the NMC in relation to these proceedings and completed a Case Management Form, dated 11 May 2022, in which he stated:

'I am truly sorry for the shame I have brought on myself and family, not to mention my work colleagues, this whole case is causing me great pain and anxiety, I would really like it drawn to a conclusion at the early possible time [sic]'

The panel concluded that Mr Tobin has not demonstrated an understanding of how his actions put patients at a risk of harm and, despite his acknowledgement of the impact that his conviction has had on his colleagues, he has failed to suitably demonstrate insight into how his convictions have impacted negatively on the reputation of the nursing profession.

In its consideration of whether Mr Tobin has taken steps to strengthen his practice, the panel took into account that there was no evidence before it that Mr Tobin's conviction or participation in organised criminal activity resulted in any clinical failings on his part. However, the panel had regard to Mr Tobin's sentence, and concluded that it would be extremely difficult for Mr Tobin to demonstrate action which he has taken to strengthen his practice as he is precluded from working as a nurse by reason of his imprisonment. The panel further bore in mind that Mr Tobin has not provided any documentation such as a reflective piece which he may be able to provide despite his current sentence.

The panel is of the view that there is a risk of repetition based on the seriousness of the charges found proved and the duration of the illegal activity in which Mr Tobin was involved, which spanned over a period of more than four years between 2016 and 2020. 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, in this case, a finding of impairment on public interest grounds was required as a reasonably informed member of the public would be highly concerned if a nurse who had been recently convicted of two counts of conspiracy to supply Class A drugs and two counts of conspiracy to supply Class B drugs were found to be fit to practise without restriction.

Having regard to all of the above, the panel was satisfied that Mr Tobin'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 Tobin off the register. The effect of this order is that the NMC register will show that Mr Tobin 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 in the NMC statement of case, the NMC had proposed that a striking off order is the most appropriate and proportionate sanction to impose in this case.

Decision and reasons on sanction

Having found Mr Tobin'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:

- A serious conviction which relates to the large-scale organised distribution of class A and Class B drugs throughout England and Scotland
- Evidence that Mr Tobin took a leading role in organised crime
- Evidence that Mr Tobin's criminal activity spanned over an extensive period of more than four years

The panel also took into account the following mitigating features:

- Mr Tobin's apology and expression of remorse to his colleagues

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 of the convictions, and the public interest issues identified, an order that does not restrict Mr Tobin'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 Mr Tobin's

conviction was extremely serious and was far from 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 Mr Tobin'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 concerns identified in this case as a result of Mr Tobin's conviction were not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mr Tobin'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:

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

However, the panel bore in mind that Mr Tobin is currently serving a custodial sentence.

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 Mr Tobin's actions is fundamentally incompatible with Mr Tobin 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?*

Mr Tobin's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Tobin's actions were serious and to allow him 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 matters it identified, in particular the effect of Mr Tobin'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 Tobin in writing.

Decisions and Reasons on an 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 Tobin's own interests until the striking off order takes effect.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary due to seriousness of the facts found proved for the same reasons as set out in its decision for the substantive 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 period of any potential appeal of this order.

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

That concludes this determination.