

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

**Substantive Meeting
Thursday 13 October 2022**

Virtual Hearing

Name of registrant:	Tracey Ann O'Callaghan	
NMC PIN:	87E0018S	
Part(s) of the register:	Registered Nurse – Sub-part 1 Adult Nursing (31 July 1990) Specialist Practitioner – District Nursing (27 September 1996)	
Relevant Location:	Glasgow	
Type of case:	Conviction	
Panel members:	Paul O'Connor Manjit Darby Catherine Cooper	(Chair, Lay member) (Registrant member) (Registrant member)
Legal Assessor:	James Holdsworth	
Hearings Coordinator:	Renee Melton-Klein	
Facts proved:	All	
Facts not proved:	None	
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 Mrs O'Callaghan was not in attendance and that the Notice of Meeting had been sent to Mrs O'Callaghan's registered address by recorded delivery and by first class post on 22 August 2022.

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 and dates of the meeting.

In the light of all of the information available, the panel was satisfied that Mrs O'Callaghan 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).

Details of charge

That you, a registered nurse:

1. On 22 October 2020, were convicted of 'Fraudulent Scheme'.

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

Decision and reasons on facts

The charge concerns Mrs O'Callaghan'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). 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 Mrs O'Callaghan was employed as a registered nurse by NHS Greater Glasgow & Clyde ("the Trust"). As set out in the preliminary in the NMC statement of case:

'3. The Registrant entered the NMC register in August 1999. At the time of the concerns raised in the referral, the Registrant was working as a band 5 nurse at the Trust.

4. The Trust introduced a new temporary staffing scheme ('the Bank'), but staff were experiencing problems getting paid. In January 2018 the Trust gave the Registrant and other staff nurses sign off privileges for the Bank. Essentially this allowed the Registrant and others to enter and authorise Bank shifts, by entering their national insurance number as their user name and a password. The Trust say that this was only to be done in exceptional circumstances, as ordinarily the Senior Charge Nurse would book and authorise Bank shifts. But the evidence suggest that the Registrant used her position and knowledge to engage in fraud.

5. The Trust say that the Registrant and Colleague A engaged in a premeditated course of conduct to systematically defraud NHS Scotland of thousands of pounds of tax payers' money.

6. This all came to light on 9 August 2018. [Ms 1], the Registrant's line manager, was suspicious as her Bank budget was overspent for July 2018. [Ms 1] then contacted [Ms 2], her line manager. [Ms 2] asked [Ms 1] to investigate. Suspicion was initially raised about Bank shifts booked, particularly in relation to the following dates:

- 16 July 2018
- 6 August 2018

7. [Ms 1] and [Ms 2] was suspicious that the Registrant and Colleague A were booking and authorising shifts for each other. [Ms 1] asked for an audit to be undertaken covering the period 1 January 2018 to 31 July 2018. This established that 18 Bank shifts had been retrospectively added to the bank system by the Registrant and Colleague A between 6 January 2018 and 31 July 2018. These were on: 6 January 2018 - Colleague A is said to have retrospectively added a shift to the Bank system for the Registrant. The Registrant is said to have received payment for a shift she did not work... The Registrant claimed for payment for a shift she did not work. Payment was stopped for this shift by [Ms 1].

8. [Ms 1] could not find evidence of these shifts being worked, despite the fact they were authorised and processed for payment, apart from the 31 July 2018 shift.

9. By September 2018 the Trust initiated a formal investigation. The Registrant contributed, but resigned during the investigation.

10. The Trust referred the matter to NHS Counter Fraud and this led to an NHS Counter Fraud investigation. The Registrant declined to fully engage in this investigation. [Mr 3], the Trusts' Counter Fraud Specialist referred the Registrant and Colleague A to the Procurator Fiscal for a charging decision. In April 2019 the Registrant and Colleague A were charged with Fraudulent Scheme.

11. On 16 July 2020 the Registrant pleaded not guilty to the following charge:
"Between 6th January 2018 and 17 August 2018, both dates inclusive, at the

Queen Elizabeth University Hospital, Glasgow you and [Colleague A] did form a fraudulent scheme to obtain money from NHS Greater Glasgow and Clyde in wages for work you had not been authorised to do and did not do in pursuance of said scheme you did book shifts for each other, make and submit claims for payment of shifts you had not worked, authorised payment of these shifts for each other and did obtain £3,096.40 by fraud.”

12. On 22 October 2020, the Registrant changed her plea to guilty.

13. The amount defrauded as seen in the Procurator Fiscal document was £2094.07 whereas the registrant’s guilty plea was to £1504.88.

14. On 24 November 2020, the Registrant was sentenced to a restriction of liberty order and ordered to pay £752.44 compensation to the Health Board.

15. On 20 December 2021 the Registrant informed the NMC that she had not practiced as a nurse in a year and had no interest of returning to nursing.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, Mrs O’Callaghan’s fitness to practise is currently impaired by reason of her 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 includes 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 accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, and *GMC v Meadow* [2007] QB 462 (Admin).

Decision and reasons on impairment

The panel next went on to decide if as a result of the conviction, Mrs O'Callaghan'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 and 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/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; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel was of the view that limbs b), c), and d) were engaged in this case. Mrs O'Callaghan'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 dishonesty extremely serious.

Regarding insight, the panel considered that Mrs O'Callaghan has not shown any insight into her actions. The panel noted in considering her insight that she initially pleaded not guilty to the charges on 16 July 2020 and only changed her plea to guilty on 22 October 2020. There is nothing before the panel to show that she has reflected on or apologised for her actions.

In its consideration of whether Mrs O'Callaghan has taken steps to remediate the charge found proved, the panel took into account the following statement from her in an email dated 28 October 2020:

'I have decided to leave my job as fraud does not look right on any CV and confirm that I will voluntarily leave NMC as I do not wish to nurse again.'

The panel was of the view that Mrs O'Callaghan has not taken any steps to remediate the charge found proved nor does she wish to practise again as a registered nurse.

The panel is of the view that there is a high risk of repetition based on her lack of insight and no admission to her wrongdoing; stating she had only with '*great reluctance*' accepted the guilty plea. Further, Mrs O'Callaghan had not demonstrated any remorse or given any apology for her actions. The panel therefore decided that a finding of impairment is necessary on the grounds of the public interest alone.

The panel took into account the case of *R (Sheikh) v GDC* [2007] EWHC 2972 (Admin) and that imposition of an order on public interest alone is a very high bar. The panel was of the view that the bar was met in this case due to the seriousness of the conviction. The panel was of the view that the public interest was strongly engaged in this case. The panel considered that an informed member of the public would be shocked if a finding of impairment was not made.

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.

Having regard to all of the above, the panel was satisfied that Mrs O'Callaghan'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 Mrs O'Callaghan off the NMC register. The effect of this order is that the NMC register will show that Mrs O'Callaghan 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 Notice of Meeting, dated 22 August 2022, the NMC had advised Mrs O'Callaghan that it would seek the imposition of a striking off order if the panel found Mrs O'Callaghan's fitness to practise currently impaired.

Decision and reasons on sanction

Having found Mrs O'Callaghan'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:

- Lack of insight into failings, including Mrs O'Callaghan's reluctance to plead guilty when confronted.
- A pattern of planned dishonesty over a period of time.
- Abuse of a position of trust.

The panel was of the view that there were 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 of the case, an order that does not restrict Mrs O'Callaghan'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 Mrs O'Callaghan's conviction 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 Mrs O'Callaghan'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 charge in this case. Furthermore, the panel concluded that the placing of conditions on Mrs O'Callaghan's registration would not adequately address the seriousness of this case.

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;*

The conduct that led to the conviction, 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 Mrs O'Callaghan's actions is fundamentally incompatible with Mrs O'Callaghan remaining on the NMC 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?*

The panel also took note of the NMC guidance on considering sanctions. The NMC submitted the following:

'...serious cases suggest that the nature of the registrant's conviction is fundamentally incompatible with continued registration:

Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- ...
- ...
- *personal financial gain from a breach of trust*
- ...
- *premeditated, systematic or longstanding deception'*

The panel was of the view that the following guidance was met in this case:

- *personal financial gain from a breach of trust*
- ...

- *premeditated, systematic or longstanding deception*'

Mrs O'Callaghan's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the NMC register. The panel was of the view that the findings in this particular case demonstrate that Mrs O'Callaghan'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 matters it identified, in particular the effect of Mrs O'Callaghan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, 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 Mrs O'Callaghan 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 Mrs O'Callaghan's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the representations made by the NMC:

'30. If a finding is made that the registrant's fitness to practise is impaired on a public protection basis is made and a restrictive sanction imposed we consider an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.

31. If a finding is made that the registrant's fitness to practise is impaired on a public interest only basis and that their conduct was fundamentally incompatible with continued registrant we consider an interim order of suspension should be imposed on the basis that it is otherwise in the public interest.'

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary to meet the public interest in this case. The panel took into account the case of *Sheikh v GDC* and that imposition of an order on public interest grounds alone is a very high bar. The panel was of the view that the bar was met in this case due to the seriousness of the facts found proved and the reasons set out in its decision.

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 mark the public interest in the interest in this case.

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

That concludes this determination.