

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

**Substantive Order Review Hearing
Wednesday, 14 December 2022 and Thursday, 15 December 2022
Monday, 20 February 2023 (*panel only*); Thursday, 23 February 2023 and Friday,
24 February 2023**

Virtual Hearing

Name of registrant:	Khaled Al-Azzam
NMC PIN:	02J0588O
Part(s) of the register:	Registered Nurse – Sub part 1 Adult Nursing, RN1 - 16 December 2002
Relevant Location:	Salford
Type of case:	Misconduct
Panel members:	Louise Fox (Chair, Lay member) Sharon Peat (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Laura McGill
Hearings Coordinator:	Petra Bernard
Nursing and Midwifery Council:	Represented by Mary Kyriacou, Case Presenter (14 – 15 December 2022) Represented by Michael Smalley, Case Presenter (23 – 24 February 2023)
Mr Al-Azzam:	Present and not represented
Order being reviewed:	Conditions of practice order (3 months)
Facts proved:	Breaches of conditions 3, 4, 5, 6, 7, 11
Facts not proved:	Breach of condition 1 and dishonesty allegation
Fitness to practise:	Impaired
Outcome:	Varied conditions of practice order (12 months)

The panel decided to vary the conditions of practice order for a period of 12 months. This order will come into effect at the end of 23 April 2023 in accordance with Article 30(1) of the Nursing and Midwifery Order 2001 (as amended) (“the Order”).

This is an early review of the conditions of practice order imposed by the Conduct and Competence Committee on 27 November 2015, for a period of 12 months. The conditions of practice order became active in January 2022. This case was due to be reviewed on 20 October 2022 and was adjourned. It was heard on 14 – 15 December 2022 when it was adjourned and the order was extended for a further 3 months. The hearing was resumed on 20 February 2023.

The panel is reviewing the order pursuant to article 30(2) and 30(4) of the Order. This case is being heard because the Nursing and Midwifery Council (NMC) has been made aware of potential breaches of your conditions of practice order 1,3,4,5,6,7 and 11, as follows:

*i) Not providing the contact details of your employer within 14 days, in **breach of condition 1***

*ii) After accepting employment, not providing the contact details of the individual or organisation offering the employment within 14 days, in **breach of condition 3***

*iii) Working shifts where there was not a nurse of band 6 or above, in **breach of condition 4***

*iv) Not working with your manager to formulate a personal development plan, in **breach of condition 5***

*v) Not meeting your manager at least every month to discuss your performance and progress towards the aims of the development plan, in **breach of condition 6***

*vi) Not providing the NMC with a copy of your personal development plan within 28 days of taking up an appointment, in **breach of condition 7***

*vii) Failing to disclose the conditions listed at 1 – 10 of the conditions of practice order to a prospective employer at the time of application, in **breach of condition 11**..*

And also to make a fact finding decision in relation to an allegation of dishonesty.

Preliminary matters

Decision and reasons on application to admit hearsay evidence of Mr 1 (day 1)

The panel heard an application made by Ms Kyriacou on behalf of the Nursing and Midwifery Council (NMC) under Rule 31 to allow into hearsay evidence the witness statement of Mr 1 dated 21 October 2022 into evidence

Ms Kyriacou submitted that this case was listed for an early review of the substantive order on 20 October 2022 when you sought an adjournment on the basis that you had not received the Nursing and Midwifery Council's (NMC) Notice of Hearing and bundle in advance of the hearing. She invited the panel to make a fact-finding decision in regard to whether you were dishonest when you informed the panel on that date you had not received the bundle until the morning of that hearing.

Ms Kyriacou informed the panel that the Egress log, which is the NMC's secure email system, was reviewed and it shows that you accessed the bundle twice before that hearing on 21 September and also on 10 October 2022. She submitted that you were dishonest in your claim when you stated that you had not received those documents until the morning of the hearing.

Ms Kyriacou submitted that the NMC does not propose to call Mr 1 to give live oral evidence but instead, proposed to adduce his evidence. She referred the panel to the witness statement of Mr 1 in which he asserts that you were sent the Notice of Hearing

on 21 September 2022 and further, he has provided a screenshot of your email address as it appears on WISER system and a screenshot of the Egress access report of the Egress package that was sent to you, with the dates and the times that the Egress package was accessed by you via your email address.

Ms Kyriacou submitted that if Mr 1 was called to give evidence, there is little more that he would be able to add as he offers no explanation but simply exhibits what has been seen on the Egress software. She submitted that it is both fair and relevant to admit his statement and exhibits. She cited the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) where the court identified some factors to consider and that is firstly, whether the statements were sole or decisive in support of the charges, the nature and extent of the challenge to the contents of the statements and whether there was any suggestion that the witnesses had reasons to fabricate.

Ms Kyriacou submitted that the exhibits perhaps are sole and decisive but they are not opinion evidence, they are simply documentary software evidence which shows that access has been made to this Egress package. She submitted that there is no suggestion that Mr 1 would have any reason to fabricate his evidence. She further submitted that it is not unfair to admit this evidence.

Ms Kyriacou submitted that you had prior notice that Mr 1's witness statement was going to be read and exhibits adduced. She submitted that it is highlighted in the Notice of Hearing letter that was sent to you 28 days in advance of this review on 15 November 2022. She submitted that it is both fair and relevant and there is no disadvantage to you in Mr 1 not being called today to give evidence as there is nothing more he could add to the statements and its exhibits.

Ms Kyriacou invited the panel to admit the witness statement of Mr 1 and its exhibits in relation to the matter of dishonesty on 20 October 2022.

You opposed the admission of Mr 1's witness statement into evidence. You stated that there is a difference between clicking the link receiving the file and accessing it to being able to open and read the documents. You told the panel that Mr 1's statement does not

say that you read the document and unless he can attend and give oral evidence to say that the documents had been read that would make a difference.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. It also considered the case law of *Bonhoeffer V GMC* [2011] EWHC 1585 (Admin) and *Thorneycroft v NMC* [2014] EWHC 1565 (Admin).

The panel considered whether the witness could add anything further than what is in his statement. The panel took into account that Mr 1 is not an expert in the software.

The panel considered that it is the sole and decisive evidence in relation to the dishonesty allegations. The panel determined it was fair and relevant to admit Mr 1's statement and exhibit in evidence. The panel was of the view that Mr 1 has no motive to misrepresent the NMC and its software system. The panel determined that the software document is factual and it is relevant evidence and the panel could decide the weight to attach to it once all the oral evidence has been heard.

The panel determined to accept Mr 1's statement and exhibit into hearsay evidence. The panel were of the view that no further relevant information could be added from him being at the hearing as he is not an expert on the system.

Decision and reasons on application to adduce hearsay evidence under Rule 31(1) of Mr Rowan Glover (day 1)

During the course of the hearing Ms Kyriacou made an application to admit the witness statement of Mr Glover into evidence.

You raised no objection to the application.

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

The panel has viewed the statement of Mr Glover with the accompanying exhibits and determined that they can be admitted pursuant to Rule 31 on the basis that it is fair and relevant to do so.

Decision and reasons on application for hearing to be held in private

Ms Kyriacou made a retrospective application, prior to you giving evidence, that parts of this case be held in private on the basis that proper exploration of your case involves reference to your health and that of family members. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that you supported the application to the extent that any reference in relation to your health and that of your family members' health should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard that there may be reference to your health and that of a family member, the panel determined to go into private session to hear those parts of the hearing in private, in order to protect your right to privacy and confidentiality, which outweighs the public interest in those matters being heard in public.

Decision and reasons on facts

Background from the previous decisions

'... your fitness to practice was found to be impaired by way of your misconduct in relation to charges that you pursued an improper personal relationship with an 18

year old patient, Patient A. At the time you were employed as an E Grade Nurse at the Royal National Orthopaedic Hospital.

The relationship started when Patient A was in your care, on the High Dependency Unit, where she was moved after a nine-hour operation to treat her serious health condition.

Prior to the November 2006 hearing you requested an adjournment. This was refused and the hearing proceeded in your absence. The panel in 2006 found that your conduct was a serious departure from the relevant standards. It found that Patient A was a vulnerable patient recovering from serious surgery, and that your actions, whilst not being sexually motivated, were entirely inappropriate, and you abused your position of trust by not maintaining professional boundaries. That panel accepted that you had previous good history, that the matters involved constituted an isolated incident and that there was no repetition. Nevertheless, it decided that a striking-off order was necessary for the protection of the public.

Your first application for restoration to the NMC Register was heard on 7 December 2012.

That panel rejected your application.'

'At a hearing held on 27 November 2015, you made a second application for restoration to the NMC Register and on this occasion it was granted, subject to ... conditions of practice.

Upon restoration of your name to the Register your registration will be subject to a conditions of practice order in the following terms:

- 1. 'You must notify the NMC within 14 days of any nursing or midwifery appointment (whether paid or unpaid) you accept within the UK or elsewhere, and provide the NMC with contact details of your employer.*

2. *You must inform the NMC of any professional investigation started against you and/or any professional disciplinary proceedings taken against you within 14 days of you receiving notice of them.*

3. *a) You must within 14 days of accepting any post or employment requiring registration with the NMC, or any course of study connected with nursing or midwifery, provide the NMC with the name/contact details of the individual or organisation offering the post, employment or course of study.*

b) You must within 14 days of entering into any arrangements required by these conditions of practice provide the NMC with the name and contact details of the individual/organisation with whom you have entered into the arrangement.

4. *At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer. Such supervision is to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse of band 6 or above who is physically present in or on the same ward, unit, floor or home that you are working in or on.*

5. *You must work with your line manager, mentor or supervisor (or their nominated deputy) to formulate a Personal Development Plan specifically designed to address the deficiencies in the following areas of your practice:*
 - a. Maintaining professional boundaries*
 - b. Maintaining safe and therapeutic relationships with patients*

6. *You must meet with your line manager, mentor or supervisor (or their nominated deputy) at least every month to discuss the standard of your*

performance and your progress towards achieving the aims set out in your personal development plan.

- 7. You must forward to the NMC a copy of your personal development plan within 28 days of the date on which you take up an appointment.*
- 8. You must send a report from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your Personal Development Plan to the NMC prior to any NMC review hearing or meeting.*
- 9. You must allow the NMC to exchange, as necessary, information about the standard of your performance and your progress towards achieving the aims set out in your personal development plan with your line manager, mentor or supervisor (or their nominated deputy) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*
- 10. You must disclose to the NMC prior to any review hearing or meeting a report not more than 28 days old from your line manager, mentor or supervisor (or their nominated deputy) setting out the standard of your performance and your progress towards achieving the aims set out in your personal development plan to any current and prospective employers (at the time of application) and any other person who is or will be involved in your retraining and supervision with any employer, prospective employer, and at any educational establishment.*
- 11. You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC's fitness to practise procedures, and disclose the conditions listed at (1) to (10) above, to them:*

- a. *Any organisation or person employing, contracting with, or using you to undertake nursing work*
- b. *Any agency you are registered with or apply to be registered with (at the time of application)*
- c. *Any prospective employer (at the time of application)*
- d. *Any educational establishment at which you are undertaking a course of study connected with nursing or midwifery, or any such establishment to which you apply to take such a course (at the time of application)*

The period of this conditions of practice order is 12 months.

This order will be reviewed before its expiry. The panel considered that any future reviewing panel may be assisted by:

- *Your attendance at any NMC hearing*
- *Up to date references from line managers or supervisors concerning your appropriate maintenance of professional boundaries in your practice*
- *A reflective piece demonstrating your further insight into your previous inappropriate conduct and the importance of maintaining safe and therapeutic relationships with patients*
- *Examples of measures you have taken to maintain professional boundaries*

The panel considered that you have continued to work in health care settings since being struck off the Register. The panel was assisted by the supported references of patients you have cared for in both paid and voluntary settings, and their family members. It was also assisted by the evidence from Ms 2 in regards to your volunteer work. She stated that you have been successful in engaging with non-engaged minority community members on a regular basis. Due to the length of time that you have not practised, you will not be able to be registered until you have successfully completed a NMC approved return to practice course. When questioned by the panel, you discussed the preliminary contact you have

made with return to practice course providers. The panel is satisfied that upon completion of a return to practice course, you would have the requisite and up-to-date knowledge and skills to effectively practice as a nurse. The panel considered, on the basis of your insight, remorse, remediation, and upon the successful completion of a return to practice course, that it was unlikely you would again allow your practice to fall below the standards expected of a registered nurse and you are accordingly now a fit and proper person. The panel is also satisfied that the public interest in the upholding of standards and maintenance of confidence in the profession has been met by your original sanction and the fact that it has been nine years since you were struck off. It noted that you had been assisted by three witnesses today and further written referees, all of whom supported your return to practice. In particular, Ms 1 stated that it would be a “loss” to the public if you were not allowed to return to practice. The panel considered that there is a public interest in returning a motivated and passionate person to safe nursing practice. In addition, the panel considered it proportionate and in the interests of public protection to impose conditions on your registration once it has been restored. Although you have worked appropriately in both supervised and unsupervised settings as a carer, the panel considered that a conditions of practice order would ensure that you demonstrate full remediation of your practice in a clinical nursing setting. The panel considered that such an order would provide you with an opportunity to demonstrate a further period of continued learning and reflection in a structured setting while appropriately protecting the public.’

The panel has had regard to all of the evidence and documentation before it, including the NMC bundle and responses from you. It has taken account of the submissions made by Ms Kyriacou on behalf of the NMC. She submitted that it is the NMC’s position that you are in breach of the above-mentioned conditions of practice.

Ms Kyriacou outlined the facts of the case and took the panel through the relevant parts of the master bundle. She submitted that whilst the conditions of practice have essentially been in force since 26 January 2022, it has come to the NMC's attention that a number of conditions have been breached and those are conditions 1, 3, 4, 5, 6, 7

and 11. She submitted that the NMC will call two witnesses in respect of some of the breaches and they will speak to what happened during your employment with them from 14 March 2022 until your dismissal in July 2022.

Ms Kyriacou submitted that you did not provide the NMC with the complete employment details, name and contact details and that a member of the NMC, Mr Glover, had to Google search the contact details to make contact. Ms Kyriacou submitted that the employer was not fully aware of the conditions attached to the conditions of practice order and that you did not work with a line manager or anybody to complete your personal development plan, and further, you did not meet monthly, as required, for the purpose of reviewing that development plan with the line manager.

Ms Kyriacou submitted that in addition, there is a supervision requirement under condition 4 of the order. Ms Kyriacou submitted that there is evidence to suggest that, in fact, you worked at least one shift where there was no band 6 nurse working on the same shift as you, therefore, placing you in direct breach of condition 4.

Ms Kyriacou submitted that in addition, there is the matter of dishonesty. It is alleged that you were dishonest when you told the previous reviewing panel on 20 October 2022 that you did not receive the NMC bundle until the day of that hearing on 20 October 2022. She said there seems to be a theme running through your approach to the conditions of practice order in regard to your disclosure to your employer and also to the NMC.

Witness 1's evidence – under affirmation (day one)

The panel heard evidence from Witness 1, the ward manager at the time you were appointed. Witness 1 confirmed that she interviewed you before 30 January 2022 for the post of a Qualified Nurse, on the spinal ward B8. You asked Witness 1 to confirm that she was the B8 manager when your pre-employment checks were done and she answered in the affirmative. You asked Witness 1 to confirm that it was the resourcing administrator who attached your pre-employment declaration that highlighted that you had declared conditions. You referred to the email dated 24 January 2022 from the resourcing administrator to Witness 1 in which it states:

'Please can I highlight something has been declared on the attached form. Khaled has indicated that his NMC Pin should be re-activated in the next few weeks'

Witness 1 confirmed she received it as attached.

You referred Witness 1 to an email sent to her from the recruiting manager, which she forwarded to colleagues in the human resources department, in relation to the declaration form you provided, to which she responds '*...this is fine...*' Witness 1 said that she understood that her response was in relation to your move and not specifically to do with the conditions which are on the declaration form. Witness 1 further stated that she had assumed the conditions disclosed were in relation to your private teaching business and that you provided false reasons why the conditions were put in place by the NMC. Witness 1 stated that the reason you told her why the conditions were in place was due to an administrative error because you had moved address.

When questioned by the panel, whether Witness 1 had seen any other document that sets out more conditions than those you enclosed in the summary on your application form, Witness 1 said no. Further, she told the panel that she had no verbal discussions with anyone regarding a full list of the conditions of practice.

Witness 2's evidence – under affirmation (day one)

The panel heard evidence from Witness 2, the ward manager when you started your role. Witness 2 told the panel that you started working with her on 14 March 2022. She stated that she was not aware that there were conditions in place on your practice and only became aware of them when the compliance officer at the NMC contacted her.

When questioned by you whether the ward was short-staffed, she said that the rota showed no registered nurses on a few occasions but not every day. When asked whether there were any concerns in relation to your professional boundaries with colleagues, she said there were not. She said that your contract was terminated

because you did not disclose that there were conditions of practice on your NMC Personal Identification Number (PIN).

When asked by the panel what the process was for a new starter, Witness 2 told the panel that a band 5 nurse is allocated beforehand to work alongside the new starter for the whole of the supernumerary period and a mentor is also allocated for two weeks, depending on the individual. Witness 2 said that personal development plans (PDP) and appraisals would be handled by band 6 or 7 nurses. There would also be catch-ups, annual appraisals with goals going forward.

Witness 2 told the panel that you did not have a meeting at four or eight weeks but had a twelve week catch-up meeting. She said you discussed discrepancies on night shifts and that it was at that point you disclosed your PDP to her, which you wrote yourself and said was part of a personal and professional plan that you wanted to keep for yourself. Witness 2 told the panel that she did not formulate a PDP for you as you did not need one as an experienced nurse. She confirmed in response to panel questions that you had not asked to meet with her before the twelve week meeting to discuss your progress. Witness 2 stated that she did not receive any communications internally from colleagues regarding your conditions of practice, and only became aware of them after the NMC compliance officer contacted her. Witness 2 confirmed that you had not told her about the requirement to have supervision from a band 6 nurse and had she known this she would not have put you on night shifts where there was no band 6 nurse present. She said there were declarations on your application form but they were condensed into bullet points and the reasons you gave for the conditions focussed on returning to practise after a long gap and an issue with your address.

Your evidence under affirmation (day 2)

The legal assessor took you through the alleged breaches to which your responses were as follows:

Potential breaches of your conditions of practice order:

- i) *Not providing the contact details of your employer within 14 days, in breach of condition 1*

You said that you officially had no employers to report to until 16 March 2022 when you officially accepted and signed a contract with B8 at Salford Royal (the Hospital), which you reported to the NMC the second day from starting. You referred the panel to an email on this date to Mr Glover, which states:

"Hi Rowan, thank you for your email. I have received a few offers and I have accepted one at [the Hospital]. I will start signing my competency file today. If there is anything else you need to know, please let me know..."

You said that you started your induction on the 14 March 2022 and on 15 March 2022 you were on the ward.

- ii) *After accepting employment, not providing the contact details of the individual or organisation offering the employment within 14 days, in breach of condition 3*

You said that you provided the name of the organisation and added that it was ward B8 in your email to Mr Glover on 16 March 2022.

- iii) *Working shifts where there was not a nurse of band 6 or above, in breach of condition 4*

You said that Witness 2 confirmed on all shifts, day and night, there was a site manager or bed manager who is a band 7 nurse, in the hospital at all times. You said they always visited ward B8 as it was understaffed and they were always available if there were any problems. You gave evidence that the environment was hectic and it was chaotic in terms of staffing and there were times when there were no registered nurses on the rota.

- iv) *Not working with your manager to formulate a personal development plan, in breach of condition 5*

You told the panel that when you returned from being [PRIVATE], you tried to meet with Witness 2 to remind her about your PDP. You said the ward was chaotic and you started to develop the PDP by yourself as you were running out of time and you thought a draft would be helpful and could be changed when you worked on it together.

- v) *Not meeting your manager at least every month to discuss your performance and progress towards the aims of the development plan, in breach of condition 6*

When you met with Witness 2 at twelve weeks you said you did discuss your progress. You said that during that one-to-one with Witness 2 she apologised for not meeting you in the first four weeks. She reviewed your progress and completed and signed an internal hospital review form that stated your performance was exceptional and your communication and contribution was appreciated. You said you gave Witness 2 the PDP to review and sign but you were surprised when she did not do this and instead asked for an electronic version for her to review.

- vi) *Not providing the NMC with a copy of your personal development plan within 28 days of taking up an appointment, in breach of condition 7*

You said you had a telephone call with Mr Glover and told him that you gave your PDP to your manager, that it is ready but not signed and dated.

- vii) *Failing to disclose the conditions listed at 1 – 10 of the conditions of practice order to a prospective employer at the time of application, in breach of condition 11.*

You said that there is a list of at least seven of the most senior members in the hospital to whom you directly or indirectly disclosed these conditions to.

When asked by the panel why you did not cut and paste the full conditions of practice into your job application form, you said because it was a small box to reply into so you summarised as the contents were around four pages; you said you would further explain at the face-to-face interview stage and then expand at the shortlist stage, which is what you did.

Ms Kyriacou referred you to an email from you to the NMC dated 13 February 2021, which states:

'...the difficulty in all the interviews I have been successful in is ensuring there is a band 6 member of staff present to supervise me at all times. Since the new year alone, I have been successful in 3 interviews, all of which could not meet the condition of a band 6 to directly supervise at all times...'

Ms Kyriacou asked you if this was the reason why you did not fully disclose the condition on your job application form. You said no, because you had verbally declared all the conditions to Witness 1.

In relation to the allegation that you were dishonest when you stated that you did not receive the papers for your hearing on 20 October 2022, you said that you had access, clicked the link with your phone and nothing came up and when it came to the part to register with Egress, the screen clicked back to the home page. You said you did try twice but there was nothing there to read. You said that you were not dishonest and that accessing is one thing and the ability to read the documents is another matter. You said you did click the Egress link but it kept flashing and went back to the home screen. You said that there were only alleged breaches of two conditions in the Notice of Hearing letter but at the hearing on 20 October 2022, there were more alleged breaches of conditions added. When asked why you did not notify the NMC that you could not access the bundle, you said that you assumed that the files you received for the hearing on 20 October 2022 would be the same documents as those you had received previously. You said that you did not believe you required any further documents as you had a bundle from the internal investigation within the hospital. You told the panel there

is evidence in the bundle of you contacting the NMC on other occasions about your difficulties accessing documents via Egress.

In closing submissions, Ms Kyriacou submitted that the NMC case is that you have breached conditions 1, 3, 4, 5, 6, 7 and 11 and were dishonest in relation to the hearing before the Fitness to Practise Committee on 20 October 2022. She submitted that you had sent NMC registrations an email on 13 February 2021 to explain that you had some interviews, three of which had been successful, but you were struggling to find a job because of condition 4 in particular.

She submitted that this sets some background to potentially what was going on with you; that you had been trying to obtain employment and that perhaps the conditions were preventing you from getting that employment because of the supervision requirement.

Ms Kyriacou submitted that you were trying for some time to obtain a nursing position and did not disclose in full the conditions of practice order so that you could gain employment, thereby circumventing the conditions attached to your practice. She submitted that it is clear that you have not been forthcoming in your dealings, firstly with the employer from January 2022 to around June 2022, but also with the NMC.

In relation to the dishonesty allegation, she submitted that there is a statement from Mr 1 and a screenshot showing the Egress access report the Egress package that was sent to you on 21 September 2022. That package enclosed (1) the notice of review hearing and (2) the substantive order review hearing master bundle. She submitted that you made no attempt to contact the NMC to get access to the bundle.

Ms Kyriacou submitted that there is evidence to suggest that you had received the bundle, and that being the case, you were dishonest in your contention to the panel on 20 October 2022 that you had not received it.

Ms Kyriacou invited the panel, therefore, on the basis of the evidence that it has seen and heard to find the facts proved in relation to dishonesty on 20 October 2022.

You submitted that there is no evidence to say that you opened and read the documents sent to you for your hearing on 20 October 2022. You reiterated that originally it was about breaching two conditions, the PDP and the meetings. You were then asked about other additional allegations at the hearing which you learned of for the first time at the hearing on 20 October 2022.

You told the panel that Witness 1's evidence was contradictory and that she misunderstood what the conditions were referring to. You told the panel that Witness 1 said in oral evidence and that she asked you to provide more information but could not provide the email which she referred to. Further, she could not explain why she thought the NMC would sanction someone running a private business. She thought you did research for companies. You told the panel that Witness 1's statement is not reliable as first she says she did know about the conditions then she says she did.

You told the panel that in relation to Witness 2, she confirmed that workload at the hospital was extreme and that there were staffing issues. Further she stated that you were a good team member and did not need supervision.

You acknowledged on reflection that what you did was not enough to ensure you had one-to-one meetings with your manager every month in order to develop the PDP and review your progress.

The panel heard and accepted the advice of the legal assessor who referred the panel to the case of *Ivey and Genting Casinos*, in which Lord Hughes notes that:

"When dishonesty is in question, the fact finding tribunal must first ascertain subjectively the actual state of the individual's knowledge or belief as to the facts, the reasonableness or otherwise of his belief is a matter of evidence going to whether he held the belief. But it is not an additional requirement that his belief must be reasonable. The question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact finder by applying the objective standards of ordinary, decent people.

There's no requirement that the defendant must appreciate that what he has done by those standards is dishonest."

Application to extend the current order from 25 January 2023 under Article 30(2) and 30(4)(b) (day 2)

This is an early review of the Order, which was requested by the Nursing and Midwifery Council (NMC) to allow the panel time to consider new information in relation to alleged breaches of the Conditions of Practice Order and a new concern surrounding dishonesty. The panel has conducted a fact finding hearing in relation to the new information, however it has not made any determination in the time allocated to the hearing. The case consequently adjourned part-heard.

At the conclusion of the evidence in relation to the fact finding in the hearing, Ms Kyriacou made an application on behalf of the NMC to extend the current conditions of practice order for a period of three months. She was mindful that the current order in place is due to expire on 25 January 2023 and the panel have not yet reached the decision stage of the substantive order review.

Ms Kyriacou submitted that the application is being requested to preserve the NMC's position to protect the public. She submitted that it is the NMC's view that there has been no decrease in risk and a potentially an increase in risk in view of the alleged breaches of conditions of practice in this case.

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

Decision and reasons on extending the order

The panel considered the application and decided that an order was necessary and should be extended to protect the public, and to restrict your practice in the intervening period of the current order to allow sufficient time for your case to be relisted and heard.

As the panel has not made any decisions on the facts, it was of the view that the risks

identified by the previous panel have neither increased nor decreased, and that the current order would provide sufficient public protection until this review can be concluded.

The panel determined that the order would run for a duration of 3 months from the end of 25 January 2023.

Decision and reasons on facts

The hearing resumed on 20 February 2023.

*i) Not providing the contact details of your employer within 14 days, in **breach of condition 1***

The panel found this allegation not proved.

In reaching this decision, the panel considered the following email exchanges between you and Mr Glover on 16 March 2022 in which you let him know that you had accepted a job offer at the Hospital and you were starting your competency file on the same day: *'hi Rowan, thank you for your email. I have received a few offers and I've accepted one at [the Hospital]. I will start signing my competency file today. If there is anything else you need to know please let me know.'*

The panel determined that you did notify the NMC that you were working as a registered nurse and provided them with the name and location of the hospital and the ward you were working on. The panel was of the view that based on the details you provided, the purpose of the condition had been fulfilled.

The panel determined you did not breach this condition.

*ii) After accepting employment, not providing the contact details of the individual or organisation offering the employment within 14 days, in **breach of condition 3***

The panel found this allegation proved.

In reaching this decision, the panel considered Mr Glover's follow-up email to you dated 17 March 2022 requesting your manager's name and contact details. The panel noted his further email dated 26 May 2022 requesting the same information previously requested and your response email of 30 May 2022 to Mr Glover in which you provide the name of your employer and your manager's name, but no contact details. The panel accepted Mr Glover's statement in which he said that he had to do a Google search in order to obtain the organisation's switchboard number which he used to call the employer on 13 June 2022.

You told the panel that you thought you had given enough detail by giving the hospital name and the ward, however, the panel determined that the information you provided on 26 May 2022 was incomplete and significantly outside of the required 14 day time limit. The panel determined that Mr Glover was clear in the detail he required from you and further, you as an experienced nurse should be aware of the detail required to be given in the information being asked for contact details.

The panel determined that the first time this information was asked of you there could have been a misunderstanding however when you were pursued a second time following a significant timelapse it would have been clear to you what was required.

The panel determined that based on the above-mentioned emails and the evidence of Mr Glover, you failed to provide the contact details of the individual or organisation offering the employment within 14 days.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

*iii) Working shifts where there was not a nurse of band 6 or above, in **breach of condition 4***

The panel found this allegation proved.

In reaching this decision, the panel considered the oral evidence of Witness 2 who stated that you worked without band 6 nurse supervision on at least one night shift. The panel also considered your suspension from duty outcome letter from the dated 17 June 2022, which states:

'[Witness 2] described how you had initially been doing day shifts but then you have also done a period of night shifts where there had been no band 6's present on the unit'

The panel considered your evidence that there was a band 7 site manager who was always available and regularly visited your ward on shift. This was accepted by Witness 2 but she was clear this did not meet condition 4 in terms of supervision. The panel determined that there is no evidence to show that the site manager would have been aware that it was part of his/her role to provide this level of supervision to you or that they were under any obligation to do so. Therefore, the panel concluded that it was unlikely that there would be the level of oversight required by this condition to ensure patient safety.

The panel took into account Witness 2's evidence that you did work without the supervision of a band 6 nurse on at least one night shift. The panel was of the view that a site manager being on duty at the same time as you does not constitute the level of supervision contemplated in this condition. The panel determined that condition 4 is a proactive condition that required that you must ensure that it is adhered to.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

*iv) Not working with your manager to formulate a personal development plan, in **breach of condition 5***

The panel found this allegation proved. In reaching this decision the panel considered your own account that this condition was not met by you. You told the panel that as the

ward was chaotic and you had not met with your manager, you were under pressure to provide your PDP to the NMC and therefore you developed a draft on your own which you later shared with your manager.

The panel determined that the purpose of this condition is that you should be liaising with your manager to develop and revise your PDP whilst monitoring your progress in order that a PDP could be developed that you were both happy with. The PDP was supposed to address professional boundaries and safe and therapeutic relationships with patients.

The panel determined that you did not work with your manager to develop your PDP and took account of Witness 2's evidence who stated that she had not seen it until your one-to-one meeting which was held twelve weeks after you started your employment.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

*v) Not meeting your manager at least every month to discuss your performance and progress towards the aims of the development plan, in **breach of condition 6***

The panel found this allegation proved. In reaching this decision, the panel considered that in line with *iv* above, that Witness 1 and Witness 2 in evidence acknowledged that due to staffing pressures they could not schedule timely meetings. On the basis of the facts found proved in *iv* above, the meetings did not take place and they were unaware that they needed to meet with you monthly to discuss your PDP with you.

The panel determined that you are required to meet with your manager, line manager or mentor on at least a monthly basis and you did not meet at least every month. The panel took account of your own evidence in which you also stated that these meeting did not take place.

The panel took account of the evidence of Witness 2 who gave the reason why these meetings did not take place on a timely basis was due to staff shortages and further you were [PRIVATE] for a period of time which reduced the availability to schedule these meetings.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

*vi) Not providing the NMC with a copy of your personal development plan within 28 days of taking up an appointment, in **breach of condition 7***

The panel determined that this allegation is proved.

In reaching this decision, the panel considered the evidence of Mr Glover. The panel took account that you started employment in March 2022 and it was not until 9 June 2022 when telephoned by Mr Glover, that you responded to his email to you of 30 May 2022, reminding you to provide the PDP which was overdue.

The panel determined that you did not provide this information within 28 days of your appointment or in fact at all despite being reminded by the NMC. The panel determined that in your own evidence, you do not dispute that you did not provide this information; you stated that the ward was busy and chaotic and that you created your own PDP but had not been able to get your manager or mentor to sign it off, so you were unable to send it to the NMC.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

*vii) Failing to disclose the conditions listed at 1 – 10 of the conditions of practice order to a prospective employer at the time of application, in **breach of condition 11**'.*

The panel found this allegation proved.

The panel considered your job application form to the Northern Care Alliance NHS Foundation Trust.

The panel was of the view that you summarised the conditions during the application process which made them less specific and therefore was not a full disclosure. The panel determined that you did not provide your employer during the application process or subsequently at any time during your employment with a full list of conditions either verbally or in writing.

The panel accepted the evidence of Witness 1 and Witness 2 who stated that you had not given them the full details of the conditions of practice order at any stage of their interactions with you. In addition, the panel considered it was highly unlikely that you would have been able to verbally convey the number and detail of conditions 1 – 10 accurately without providing your employer with a written copy of the actual conditions.

The panel determined on the balance of probabilities that it is proved that you breached this condition.

AND

It is alleged that you were dishonest when you told the previous reviewing panel on 20 October 2022 that you did not receive the NMC bundle until the day of the hearing on 20 October 2022.

The panel found this allegation not proved.

The panel considered the statement in evidence of Mr 1 and your evidence. It also took account of the case law in *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 in relation to the test for dishonesty.

The panel took account that in Mr 1's statement he says that the hearing documents were accessed by you. The panel took account that Mr 1's statement and the exhibits

show that you accessed the Egress website on two dates prior to the hearing. It also noted your account, that you confirmed you clicked on the link but on both occasions you were not able to open the documents. It also noted your explanation that you did not inform the NMC of this difficulty before the hearing as you assumed the bundle contained information you had already received from the hospital, as you thought the concerns raised were the same. The panel considered due to varying familiarity of the software and frequency of use, it is possible you received the documents and could not open them.

The panel does not doubt Mr 1's statement that the documents were sent and the Egress website was accessed by you on the two occasions in question. However, no evidence was provided to prove that you were able to open the documents. The panel determined that it is plausible that you clicked on the link and the documents did not launch as expected. In addition, the panel noted emails provided in the bundle from you showing you had difficulties before accessing Egress and had requested for documents to be sent via email instead.

Therefore, the panel determined that there is insufficient evidence before it to prove that you were dishonest. In its consideration of the statement of Mr 1, the panel determined that this is evidence which has not been tested by being questioned to seek further clarification on it.

The panel determined on the balance of probabilities this charge is not proved.

Decision and reasons on review of current impairment

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there 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 without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all of the documentation before it, including the NMC bundle. It has taken account of the submissions made by Mr Smalley on behalf of the NMC and also your evidence.

Mr Smalley referred the panel to the NMC's *Standard reviews of substantive orders before they expire* Guidance REV-3A which sets out the factors to be considered.

- *'Has the nurse, midwife or nursing associate complied with any conditions imposed? What evidence has the nurse, midwife or nursing associate provided to demonstrate this? What is the quality of that evidence and where does it come from?'*

Mr Smalley submitted that you failed to comply with the conditions. He stated the key breach was that you failed to inform your employer of the full conditions. It was therefore difficult to comply with the other conditions when your managers were unaware of the requirements.

- *'Does the nurse, midwife or nursing associate show insight into their failings or the seriousness of any past misconduct? Has their level of insight improved, or got worse, since the last hearing?'*

Mr Smalley submitted that at your second restoration hearing in 2015, the panel determined that you demonstrated sufficient insight and remediation of your misconduct.

- *'Has the nurse, midwife or nursing associate taken effective steps to maintain their skills and knowledge?'*

Mr Smalley submitted that since 2015 you have completed the required return to practice course, however you have not continued your Continuing Professional Development (CPD), nor attended regular meetings with a supervisor or developed a PDP with management support.

- *‘Does the nurse, midwife or nursing associate have a record of safe practice without further incident since the last hearing?’*

Mr Smalley submitted that the panel have seen comments in evidence from you previous employers that you were working well in your clinical capabilities and no further concerns have been raised since. However, he told the panel that you have a new employer since 17 February 2023 and as this employment is so recent, there was currently no feedback from your line manager.

- *‘Does compliance with conditions or the completion of required steps demonstrate that the nurse, midwife or nursing associate is now safe to practise unrestricted, or does any risk to patient safety still remain?’*

Mr Smalley submitted that because of the breaches and failure to adhere to the conditions to date, your clinical practice has not been tested. He submitted that in light of the lack of regulatory oversight over a period of time your practice remains impaired and invited the panel to find that your fitness to practise remains impaired.

Mr Smalley submitted that the public protection concern would not be addressed if the panel were to take no action in this matter. He submitted that any sanction is a matter for the panel’s professional judgement.

Mr Smalley made a correction to his statement that you were dismissed from your previous employer, whereas in fact your contract was terminated during your probationary period.

You told the panel that during your time working at the Hospital you were deemed competent by Witness 2 and there were no concerns raised in relation to you clinical practice. You said when you applied for different jobs you made the NMC aware each time you accepted an offer. You said that you have learned from your past mistakes

You told the panel that you have a new job, that it is a 28-bed ward, with a ward manager, deputy ward manager, and each shift has a band 6 nurse and two band 5

nurses. You said each nurse would look after around ten patients, with other staff members allocated their own varying number of beds to look after. You told the panel that you have undertaken a selection of online mandatory training courses.

You told the panel that during your interview for your current role you shared the full conditions of practice with your new employer by showing them to the interviewer on your phone. You said you explained each of the conditions one by one. You said you did the same with your line manager when you started work, asking for a meeting straight away and explaining each condition, specifying the need to develop a PDP, the need for monthly meetings and for a report with comments on your clinical performance and conduct. You said the conversation went well. You said this was evidence that you have learned from your mistake and everyone knows about the conditions of practice order.

When asked by the panel what you might do in the event of staff shortages and a band 6 nurse is not available, you gave a recent example when you had volunteered to cover a shift and this issue had arisen. You told them that you cannot work without a band 6 nurse present. You said that you were told to have a study day instead and you did some training in the library.

You told the panel that you have learnt a big lesson about being professional at all times and whilst working at the Hospital there was no issue either professionally or in relation to your conduct.

You provided the panel with a screenshot of a written communication from the ward manager at your current employment. This was headed '*return to practice*' and confirms that the ward manager is aware of the NMC conditions of practice. When asked by the panel why the subject line is headed '*return to practice*' you said that as your previous employment was just 3 or 4 months in total and you were seen as freshly returned to practice, you had headed the communication in that manner. You told the panel that in the same screenshot it can be seen that she acknowledged all the conditions. When asked by the panel whether your line manager has a full physical copy of your

conditions of practice you said that she had only seen the full list of conditions on your phone.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel noted that the last reviewing panel found that you had developed sufficient insight into the misconduct that occurred in 2006 that you could return to practice with a conditions of practice order. The panel had no evidence before it to suggest this has changed. The panel then went on to consider your insight in relation to the breaches of your conditions of practice. The panel noted that you have complied with some of the conditions in relation to your new employer but was concerned that you still have not recognised the importance of providing them with a full written copy of those conditions. The panel determined the screen shot of the email you provided from your employer evidenced that you have discussed some of the conditions with her. However the panel noted that the email states '*return to practice*' and therefore it is unclear if she is aware of the true reasons for the conditions of practice. The panel determined your insight into the seriousness of the breaches of your conditions of practice is therefore limited.

The panel determined that you have failed to establish that you are not impaired therefore it cannot be satisfied that there is no risk of repetition.

The panel considered whether you are safe to practise unrestricted. The panel determined that it was due to the breaches of conditions of practice your employment was terminated, therefore your conduct in the working environment has not been tested in relation to providing a PDP and working under supervision. The panel acknowledged that some of the conditions have been complied with in relation to keeping the NMC up to date with where you are working however you have not been tested against working

supervised over a period of time, therefore it is very early days to say whether you are safe to practise unrestricted. The panel determined that you have not had the opportunity to work on a PDP and that you have only had a short time in your new role. The panel determined that you appear to have a limited understanding of the protective nature of the conditions. The panel determined that it was not yet assured that you are being fully open and transparent in relation to the conditions on your practice. The panel therefore decided that a finding of continuing impairment is necessary on the ground of public protection.

The panel has borne in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards of conduct and performance. The panel determined that, in this case, a finding of continuing impairment on public interest grounds is also required.

For these reasons, the panel finds that your fitness to practise remains impaired.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

The panel first considered whether to take no action but concluded that this would be inappropriate as the conditions of practice order has not been complied with and it would not provide any public protection. 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, the conditions of practice have not been tested and you have not performed under the conditions and an order that does not restrict your practice would not be appropriate in

the circumstances. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether imposing a further/varied conditions of practice order on your registration would still be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable.

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. Although the panel determined that there have been breaches of the conditions of practice imposed, it took into account that you appear to be willing to comply with further conditions and that no concerns have been raised about your clinical practice. The panel considered that a varied conditions of practice order could be formulated that could protect patients and the wider public interest and would be a proportionate sanction, giving you a further opportunity to demonstrate safe and effective practice under supervision.

The panel decided to vary the current conditions of practice order to provide greater clarity for you and your employer about the requirements and to update the conditions in line with the NMC's current guidance on conditions of practice.

The panel was of the view that to impose a suspension order would serve no useful purpose and would be disproportionate at this time.

Accordingly, the panel determined, pursuant to Article 30(1)(c) to vary the conditions of practice order for a period of 12 months, which will come into effect on the expiry of the current order, namely at the end of 25 April 2023. The panel determined that the length of the order is appropriate and proportionate in that it will give you sufficient time to evidence safe and effective practice in compliance with the Order.

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or

nursing associates.

1. You must keep the NMC informed about anywhere you are working by:
 - a. Telling your case officer within seven days of accepting or leaving any employment.
 - b. Giving your case officer your employer's contact details.

2. You must keep the NMC informed about anywhere you are studying by:
 - a. Telling your case officer within seven days of accepting any course of study.
 - b. Giving your case officer the name and contact details of the organisation offering that course of study.

3. You must immediately provide a written copy of these conditions to:
 - a. Any organisation or person you work for including your line manager / supervisor and or mentor.
 - b. Any agency you apply to or are registered with for work.
 - c. Any employers you apply to for work (at the time of application).
 - d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - e. Any current or prospective patients or clients you intend to see or care for when you are working independently

4. You must tell your case officer, within seven days of your becoming aware of:
 - Any clinical incident you are involved in.
 - Any investigation started against you.
 - Any disciplinary proceedings taken against you.

5. At any time that you are employed or otherwise providing nursing services, you must:
 - Place yourself and remain under the supervision of a workplace line manager,

mentor or supervisor nominated by your employer. Such supervision is to consist of working at all times on the same shift as, but not necessarily under the direct observation of, a registered nurse of band 6 or above who is responsible for the same patients and who is physically present in or on the same ward, unit or floor that you are working in or on.

6. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - Your line manager, supervisor or mentor.
 - Any current or future employer.
 - Any educational establishment.
 - Any other person(s) involved in your retraining and/or supervision required by these conditions.

7. You must work with your line manager, supervisor or mentor to create a personal development plan (PDP). Your PDP must address the concerns about maintaining professional boundaries and maintaining safe and therapeutic relationships with patients.

You must:

 - Send your case officer a copy of your PDP within 28 days of starting your employment.
 - Send your case officer a report not more than 28 days old from your line manager, supervisor or mentor prior to any NMC hearing or meeting. This report must show the standard of your performance and your progress towards achieving the aims set out in your PDP.

8. You must meet with your line manager, supervisor or mentor at least every month to discuss the standard of your performance and to ensure that you are making progress towards aims set in your personal development plan (PDP).

9. You must provide the NMC with a written reflection in advance of the next review using a recognised reflective model in relation to the following:

- The importance of complying with the Code of Conduct;
- The importance of being open and transparent with your employer and the NMC and complying with your Conditions of Practice.

The period of this order is for 12 months.

This conditions of practice order will take effect upon the expiry of the current conditions of practice order, namely the end of 25 April 2023 in accordance with Article 30(1).

Before the end of the period of the order, a panel will hold a review hearing to see how well you have complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case may be assisted by:

- Your attendance at future hearings; and
- Detailed testimonials / references from either paid or unpaid work.

This will be confirmed to you in writing.

That concludes this determination.