Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

3-6 June 2019

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of registrant:	Mrs Julie Cummins
NMC PIN:	06C0775E
Part of the register:	Registered Adult Nurse (6 March 2006)
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	David Newman (Chair, Lay member) Faith Thornhill (Registrant member) Rachel Childs (Lay member)
Legal Assessor:	Simon Walsh
Panel Secretary:	Sam Headley
Mrs Cummins:	Present on 4 June. Not present on 3, 5 and 6 June. Represented throughout by Tom Hoskins, instructed by the Royal College of Nursing (RCN)
Nursing and Midwifery Council:	Represented by Bryony Dongray, Case Presenter
Facts proved by admission:	All
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	No interim order imposed

Details of charge:

That you, a registered nurse:

1. In January 2016 provided one or more of the certificates detailed in Schedule 1 to Your World Recruitment.

2. In August 2016 provided one or more of the certificates detailed in Schedule 2 to Your World Recruitment.

3. In 2017 provided one or more of the certificates detailed in Schedule 3 to Your World Recruitment.

4. On 9 March 2017;

    a) Provided one or more of the certificates detailed in Schedule 4 to Pulse Nursing.

    b) Provided a Regional Nursing Mandatory Training Confirmation form to Pulse Nursing purporting to be completed by Colleague A when it had not.

5. Your conduct in Charges 1 and/or 2 and/or 3 and/or 4, above, was dishonest in that you intended to create the impression that you had completed training courses when you had not.

6. On one or more of the dates set out in Schedule 5 worked a shift for Your World Recruitment for which you had not completed all the appropriate training to do so.

7. On one or more of the dates set out in Schedule 6 worked a shift for Pulse Nursing for which you had not completed all the appropriate training to do so.

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

Schedule 1

LCHNHST Manual Handling Level 4, 29 May 2015
LCHNHST Cardio Pulmonary Resuscitation, 11 May 2015
LCHNHST Safe Guarding Children Level 4 (CQC Level 1), 6 November 2015
LCHNHST Safe Guarding Adults Level 2, 16 April 2015
LCHNHST Fire Safety, 12 September 2015
LCHNHST Health and Safety within the Workplace, 20 March 2015
LCHNHST Conflict Resolution, 24 September 2014
LCHNHST Infection Prevent & Control Training, 24 June 2015

Schedule 2

LCHNHST Moving & Handling Level 3, 27 April 2016;
LCHNHST Basic Life Support, 29 April 2016.

Schedule 3

MLCSU Moving & Handling Level 3, 29 June 2017;
The Medical Training Company Basic Life Support, AED and Anaphylaxis updated Session, 10 January 2017

Schedule 4

The Medical Training Company, Basic Life Support, AED and Anaphylaxis update Session, 10 January 2017
MLCSU Moving & Handling Level 3, January 2017

MLCSU Safeguarding Adults, January 2017

MLCSU Safeguarding Children Level 2, December 2016

Schedule 5

30 July 2016

31 July 2016

10 September 2016

11 September 2016

25 September 2016

1 October 2016

2 October 2016

9 October 2016

22 October 2016

26 November 2016

10 December 2016

25 March 2017

1 April 2017

8 October 2017

Schedule 6

14 April 2017

13 May 2017

10 June 2017

9 September 2017

Background

You worked as a quality and safeguarding nurse with NHS Midlands & Lancashire Commissioning Support Unit ("MLCSU") and its predecessor organisation since 2015, and had been in the Band 7 role of Clinical Quality Safeguarding and Performance Coordinator since July 2016. This role did not involve direct contact with patients.

The MLCSU referred you to the NMC following initial allegations that you falsified a Manual Handling Level 3 training certificate dated 29 June 2017, as well as falsely identifying a colleague as your line manager on a training confirmation form.

On 28 September 2017 'Your World' recruitment agency, an agency for which you were undertaking additional bank shifts, had contacted MLCSU requesting verification of a moving and handling level 3 training certificate dated 29 June 2017. The administrators at MLCSU were unable to verify your certificate, as training in moving and handling to that level was not provided by MLCSU.

As a result, an informal meeting took place on 11 October 2017. During that meeting, when it was discussed that MLCSU do not offer moving and handling training to that level, you stated that you may have "over egged" it with the certificate. You advised you had also submitted a basic life support certificate to 'Your World'. This certificate also turned out to be false. During that meeting, you explained that you had been registered with two agencies for approximately 12 months, 'Pulse' and 'Your World'.

Following the meeting, an investigation took place. As part of the investigation, you attended a disciplinary investigatory meeting on 1 November 2017. At the outset, you said "I hold my hands up; it is an oversight on my part". At that meeting, you were asked whether you had provided any other certificates to any other agencies, and you said you would need to get in contact with them to check. Nine days later, you provided additional information that you were also registered with 'Choice' and had submitted other certificates to agencies.

All of the agencies you had worked for were subsequently contacted. ‘Your World’ advised that three other certificates had been received, in addition to the moving and handling certificate. ‘Pulse’ advised that you had provided them with a regional nursing mandatory training confirmation form purporting to have been completed by Ms 6, as well as seven training certificates, of which five were from MLCSU.

During the MLCSU investigation, an eLearning specialist was contacted to confirm the validity of the certificates. He confirmed that only two of the five MLCSU certificates were valid. Further enquiries revealed that Ms 6 had not completed the training confirmation form. Furthermore, it is alleged that you had falsified the form and put her name on it as your “manager” without her knowledge.

At a disciplinary hearing on 2 February 2018, you admitted all of the allegations raised by your employer at that time. In all, you falsified 16 training certificates purporting to be from three different training providers with dates of validity from May 2015 to June 2017. The ways in which you did this included:

- using your previous access as a trainer to training certificate templates which you then used to produce false certificates
- ‘cutting plus pasting’ and subsequently adding logos to certificates you had produced
- producing documents with false details, dates and signatures

You then provided these training certificates to two nursing agencies on various dates between January 2016 and mid-2017.

There were also further allegations that, as a result of submitting the falsified certificates, you were able to work 14 shifts for ‘Your World’ (between July 2016 and October 2017) and four shifts for ‘Pulse’ (between April 2017 and September 2017) when you had not completed all the appropriate training.

Findings on facts and reasons

At the start of this hearing you admitted all parts of all of the allegations against you.

The facts of these allegations were therefore announced as proved.

Decision and reasons on application under Rule 19

Mr Hoskins indicated that during your witness evidence there would be reference made to your health. He therefore made a request that parts of your hearing be held in private on the basis that proper exploration of your case involves consideration of a health condition. The application was made pursuant to Rule 19 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules").

Miss Dongray indicated that she had no objections to the extent that any reference to your 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.

Rule 19 states

> 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
>
> (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.
>
> (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—
>
> (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there will be reference to your health, the panel determined to hold such parts of the hearing in private. The panel determined to rule on whether or not to go into private session in connection with your health as and when such issues are raised.

Evidence on misconduct and impairment

The panel considered the documentary evidence adduced in this case. This included the NMC Witness Statement Bundle, the NMC Document Bundle and your bundles of documents.

The NMC Document Bundle included a number of training certificates, training records and references regarding your nursing training and professional progress. There were also some emails and notes regarding meetings you attended and a disciplinary hearing dated 2 February 2018.

The NMC Witnesses Statement Bundle included statements from:

Ms 1 - CHC Clinical Lead, Band 8A at relevant time – MLCSU
Mr 2 - eLearning specialist – MCLSU
Ms 3 - Clinical Quality & Performance Co-ordinator – MLCSU
Ms 4 - Learning and Development Facilitator – MCNHSFT
Ms 5 - Nurse Recruitment Consultant at relevant time – Pulse Nursing Agency
Mr 6 - Clinical Advisor – Your World Recruitment

Your bundle included testimonials from some of your professional colleagues, GP records, and payslips, some of your previous bank and credit card statements, and a reflective piece.

You gave oral evidence in regard to your misconduct and impairment. You explained to the panel that [PRIVATE]. You also explained that there was a lot of change and inconsistency within your employment.

You said that you encountered difficulties in printing valid certificates; your response to this was to create false certificates, but you now accept that instead of dishonestly

producing these false certificates, you should instead have sought guidance on how to print valid certificates.

You said that you recognised that you had jeopardised patients' wellbeing and put them at risk and that you could not express enough how bad you felt about it. You now realise that you should have prioritised your patients' wellbeing. You explained that, in order to be competent, nurses need to undertake relevant regular training because guidance and legislation change and nurses have to regularly update their practice.

You explained that, [PRIVATE].

In respect of your dishonest actions, you said that you were in a panic and were desperate about [PRIVATE], and this was the reason that you falsified documents in order to speed up the nursing agency recruitment process.

You accepted that your deception was prolonged over a period of about a year and a half, but explained that you were acting out of desperation to obtain supplementary employment on a regular basis in order to [PRIVATE].

During your recent work with Bleep 360 and Search, nursing agencies with which you have been working since you left MLCSU, you stated that there have been no complaints about your practice and that you were open and honest at interview about the allegations. You then went on to explain your relationships with the colleagues who had given personal and professional testimonials about you in the documentation. You explained that if you were not able to practise as a registered nurse, you would be heartbroken and feel like you had failed.

You explained that it was your personal circumstances that led you to act out of character and produce false certificates. You appreciate that dishonesty is detrimental to the nursing profession because nurses are in a position of trust and held in high

esteem. You stated that you broke the trust you had with your patients and colleagues. You further explained that [PRIVATE].

In answer to cross examination by Miss Dongray and questions from the panel, you accepted that you had not initially admitted all of your misconduct when challenged by MLCSU, but that you had subsequently admitted fully at your disciplinary hearing all of the allegations which were put to you. You did not inform MLCSU of your [PRIVATE], which you told the panel was because [PRIVATE]. The panel noted that he was present at the NMC hearing.

Submissions on misconduct and impairment

In her submissions, Miss Dongray invited the panel to remind itself that the charges related to dishonestly providing false training certificates and a false training record to nursing agencies, as well as working shifts for them when you had not completed the training required to do so.

Miss Dongray referred the panel to the case of *Roylance* v *GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

She submitted that your actions amount to misconduct as they breached the following sections of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015):

- "6.2 maintain the knowledge and skills you need for safe and effective practice
- 20.1 keep to and uphold the standards and values set out in the Code
- 20.2 act with honest and integrity at all times…"

Miss Dongray submitted that being dishonest by providing false training certificates and records was clearly serious as it meant you were given shifts you were not appropriately trained to carry out, which led to patient safety risks. She also submitted that your actions were premediated, prolonged and sophisticated because there were a number of training certificates produced in a number of different ways.

She then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting 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. Miss Dongray referred the panel to the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Miss Dongray reminded the panel that it was for its professional judgement to determine whether your fitness to practise was currently impaired, and that the NMC has defined impairment as a nurse's suitability to remain on the register without restriction.

Miss Dongray submitted that all four limbs of the test approved in *Grant* are engaged in your case. She reminded the panel to consider your clear insight and remorse in regard to your actions, and the steps you have taken to rectify [PRIVATE], and to ensure there is no repetition in the future. She submitted that if the panel did not find impairment on public protection grounds that it should find impairment on public interest grounds alone, as your actions bring the reputation of the profession into disrepute.

Mr Hoskins, on your behalf, provided a helpful skeleton argument to the panel. He also made oral submissions. He accepted that the charges were serious, repeated and of some sophistication. He referred the panel to the case of *Roylance* which defined misconduct and submitted that you had accepted that your actions amounted to misconduct at an early stage. He submitted that the nature of your misconduct was remediable because the circumstances which led you to be in a state of panic and desperation had now changed.

He referred the panel to positive testimonials from your colleagues as well as your current training certificates, which show that you are up to date with your mandatory training. The NMC accept that the certificates are valid. He submitted that the issues which led to you falsifying training certificates have now been addressed and that you do not have an attitudinal problem.

In regard to patient risk in charge 6 and 7, Mr Hoskins submitted that the panel needed to quantify the risk to the public rather than simply judging it inherent when considering public protection.

Mr Hoskins submitted that you did not seek to hide from the allegations altogether. He further submitted that you have gained a higher level of insight than you had at the time the allegations came to light. He accepted that you had not been entirely truthful at the disciplinary hearings when you were not open about [PRIVATE]. However, he argued that:

"…this impressive level of insight being developed over time is indicative of its genuineness."

He submitted that you now understand the wider repercussions to colleagues and the reputation of the profession.

Mr Hoskins invited the panel to give proper and fair consideration to your evidence, insight and remediation. He said that this was not a case where there was a risk of future breaches under the *Grant* test. Mr Hoskins submitted that this was a case that only needed to consider the public interest grounds when determining current impairment, and not a case where there were patient protection grounds for finding impairment.

He submitted that scrutiny of the certificates provided by you to the agencies supported your evidence that you had been "desperate" at the time of your misconduct. Some of the certificates you submitted to the agencies were valid, and some were not. Some of the certificates submitted had been requested, and others had not. For some of the false certificates submitted, you held valid training certificates at the time you submitted them. For other false certificates which you submitted, training certificates which had been valid were not long out of date.

Mr Hoskins further submitted that most of the topics covered by the false certificates which you submitted were areas where you had previously obtained valid certificates. You took the opportunity to undertake genuine training offered by agencies for which you worked, and were therefore not somebody who disregarded training altogether.

During the same period, you obtained valid references from colleagues. Mr Hoskins submitted that these factors limited the risk of harm to patients.

Mr Hoskins submitted that the public interest had been harmed by your actions and that in the past there had been breaches of the *Grant* criteria. However, he submitted that the evidence of past unwarranted risk of harm to patients was secondary to the dishonesty, and that there was no evidence to demonstrate that you were a future risk to patients.

Mr Hoskins submitted that although your fitness to practise is currently impaired on public interest grounds, your insight had developed incrementally over time. He submitted that your reflection for the NMC had built upon the explanation you gave to your disciplinary hearing, and that you had also now explained that you were panicked by [PRIVATE].

The panel accepted the advice of the legal assessor, which included reference to a number of judgments which were relevant to your case;

- *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin)
- *Nandi* v *GMC* [2004] EWHC 2317 (Admin)
- *Cohen* v *GMC* [2008] EWHC 581 (Admin)
- *SRA* v *Sharma* [2010] EWHC 2022 (Admin)
- *Parkinson* v *NMC* [2010] EWHC 1898 (Admin)

Decision and reasons on misconduct

The panel adopted a two-stage process in its consideration, as advised. First, the panel had to determine whether the facts found proved amounted to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

As you had admitted all of the facts, the panel moved on to consider whether those facts amounted to misconduct and, if so, whether your fitness to practise is currently impaired. 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.

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015).

The panel was of the view that your actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

- "6.2 maintain the knowledge and skills you need for safe and effective practice
- 13.5 complete the necessary training before carrying out a new role
- 20.2 act with honesty and integrity at all times…"

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that these were clearly dishonest acts in a professional role. This dishonesty came from your actions where you provided 16 false certificates and worked 18 shifts caring for patients when you had not undertaken the appropriate training to work those shifts. These actions took place over a significant period of time. The panel determined that these actions were of a serious nature.

The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of this misconduct your 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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."

Mrs Justice Cox went on to say in Paragraph 76:

> "I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my

view the test would be equally applicable to other practitioners governed by different regulatory schemes.

> Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:
>
> a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
>
> b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
>
> c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
>
> d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

The panel found that all limbs of the *Grant* test were applicable in this case – but only in respect of your past actions.

Regarding insight, the panel noted that you made admissions at the outset of the hearing and considered that you had demonstrated insight which had now developed significantly. You demonstrated an understanding of why what you did was wrong and how this impacted negatively on patients, colleagues and your employers, as well as on the reputation of the nursing profession. When questioned during the course of the hearing about how you would handle the situation differently in the future, you were able to provide answers explaining how you would act differently in the future.

The panel considered that the public was not placed at risk of harm when you falsified certificates, but it was at some risk of harm when you worked the shifts without having undertaking training which the false certificates purported to certify that you had undertaken. The panel accepted the submissions made on your behalf that the extent of the risk to the public posed by your misconduct was less than might at first appear from the numerous charges.

The panel noted the considered stress which the hearing had caused you and the remorse that you had expressed. You were often in tears. The panel decided that due to the devastating impact which the discovery of your dishonest conduct had had on you, your family, your colleagues and your profession, it is highly unlikely that you will repeat such dishonest actions. [PRIVATE]. The panel was also persuaded in this regard by your records of current validated training and your demonstrably improved understanding of how to access such training in the future.

The panel felt that the insight you have demonstrated into your past wrongdoing through the course of this hearing shows that you are unlikely to repeat dishonest actions.

For the above reasons, the panel determined that you would not falsify documentation again or work shifts when you had not done the appropriate training, and therefore there was no real future risk to the public.

The panel therefore decided that a finding of impairment was not necessary on the grounds of public protection.

However, the panel bore in mind that the overarching objective of the NMC is the protection of the public. Achieving this involved the pursuit of the following objectives:

- to protect, promote and maintain the health, safety and well-being of the public
- to promote and maintain public confidence in the professions the NMC regulates

- to promote proper professional standards and conduct for members of those professions

The panel considered your conduct deplorable. The provision of evidence of training by nurses through certification is fundamental to maintaining nursing standards. Falsifying training certificates to obtain nursing work clearly undermines that fundamental requirement. The public would find it quite wrong if the panel did not have the power to find your fitness to practise impaired in order to be able to mark publicly the panel's disapproval of your past conduct.

Having regard to all of the above, the panel is satisfied that your fitness to practise should be deemed to be currently impaired on public interest grounds.

Submissions, decisions and reasons on sanction

The panel has considered this case very carefully and has decided to make a striking-off order. The effect of this order is that the NMC register will show that you have been struck off the register.

In reaching this decision, 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 Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Miss Dongray told the panel that the NMC had advised you in advance of the hearing that it would ask the panel to impose a sanction ranging from a 12 month suspension order to a striking-off order if it found that your fitness to practise is currently impaired. Miss Dongray reaffirmed the NMC's position and invited the panel to impose a sanction within this range.

Miss Dongray submitted what she considered to be the aggravating and mitigating features of this case. The aggravating factors were:

- you were always aware how serious your conduct was because you made reference to being concerned about your NMC PIN being at risk when first challenged
- your conduct was premeditated and carried out over a long period of time
- your actions were sophisticated in the way that you forged a number of certificates for a number of nursing agencies
- your dishonesty carried potential to put patients at risk

Miss Dongray then identified the following mitigating factors:

- you demonstrated insight that had developed significantly over the course of the proceedings into how your conduct affected your colleagues, family and profession.
- you demonstrated remorse throughout proceedings
- you made admissions to the charges put to you

Miss Dongray submitted that a caution order was not an appropriate sanction as your case was too serious to be addressed with a caution. She referred the panel to the SG which stated that a caution order was available for cases where misconduct was clearly at the lower end of the spectrum.

Miss Dongray submitted that a conditions of practice order would fail properly to address the public interest, and that the mischief would not be addressed through conditional registration. This was because dishonesty was not a clinical matter that could be addressed through conditions.

Miss Dongray then submitted that either a suspension or strike off order was appropriate, and invited the panel to consider if your conduct was so serious that it is incompatible with you remaining on the register, or whether temporary removal would be sufficient to address the public interest.

Miss Dongray referred the panel to the SG in relation to imposing suspension orders. She submitted that there was no evidence of deep seated attitudinal problems but that it was for the panel's professional judgement to determine whether it believed that was the case.

Miss Dongray then referred the panel to the SG in regard to when panels should impose a strike-off order. She submitted that it was appropriate when the fundamental question was about a nurse's professionalism and involved serious matters.

Miss Dongray reminded the panel that it needed to consider whether the public confidence in the NMC could remain if your name was not removed from the register. She also stated that in light of insight demonstrated, public confidence could be potentially maintained if you were held on the register, albeit temporary removed. She reminded the panel that it must only impose a strike-off order if it deemed it the only sanction sufficient to maintain standards and confidence in the nursing profession. She submitted that it was a matter for the panel to determine by balancing all of the evidence, including your oral evidence, to determine which form of sanction would be sufficient to address the public interest.

Miss Dongray submitted that on public interest grounds alone, there would be no need for a review if a suspension order was imposed.

Mr Hoskins submitted that a three year caution order was the appropriate sanction for the panel to impose, and if the panel was not persuaded by a caution order, then a short suspension order would be suitable to address concerns raised without any review in due course.

Mr Hoskins explained to the panel that a three year caution order would be appropriate as the panel had seen enough evidence to see that your character and nursing practice had otherwise been faultless for in excess of 25 years.

Mr Hoskins referred the panel to the SG that prioritised overarching public protection. He submitted that this was the main principle to uphold and that this was not a factor in your case. He reiterated that the sanction was only necessary to maintain standards and although this was important, there were no public protection issues.

Mr Hoskins reminded the panel that the sanction imposed should be what was necessary to address the public interest and not what would be desirable. In terms of seriousness, Mr Hoskins submitted that the evidence that you appreciated that your PIN was at risk when you were challenged does not demonstrate that you knew that your

actions were serious at the time of the misconduct: this should therefore not be an aggravating factor.

Mr Hoskins further submitted that there are no previous disciplinary proceedings throughout your career as a nurse and that this was not a case involving an abuse of a position of trust. In your case, he submitted that there was nothing abusive about your actions.

Mr Hoskins also submitted that you demonstrated deep insight into your misconduct and that there was only ever a very limited risk of patients suffering harm because you were a good nurse. He submitted that although falsifying training certificates was deplorable, your misconduct did not carry through to causing any deficiencies in the care you gave to patients.

Mr Hoskins submitted that you had demonstrated a clear understanding of your wrongdoing and had apologised for your misconduct. He reminded the panel of the devastation your misconduct had caused you and your family and submitted that you had shown commitment to put things right, as well as acting upon this to date to rectify your circumstances.

Mr Hoskins submitted that you followed principles of good practice by remediating your misconduct, and that you had undertaken mandatory training. He submitted that you had impeccable good character and a good work history.

Mr Hoskins submitted that there had been significant incidents in your private life. Although general public would consider your actions deplorable, they were more understandable when your personal circumstances were considered. In personal mitigation, Mr Hoskins submitted that you were [PRIVATE], which was apparent during your oral evidence. He submitted that your [PRIVATE] had been challenging.

Mr Hoskins submitted that, in terms of dishonesty, the most serious kind was when nurses breach their duty of candour, and that this case was so far away from that example. In relation to whether your actions were premeditated, he submitted that your misconduct stopped when challenged and that there was no repetition when it was identified.

Mr Hoskins submitted that any personal financial gain you received was derived from your skill and practice as a nurse through training and experience, and that there was not a strong enough link between falsifying certificates and a demonstrable financial gain.

Mr Hoskins submitted that you had found it extremely embarrassing and devastating to discuss such private matters with strangers and it was difficult for you to attend the hearing. He invited the panel to consider how it could mark misconduct when the hearing process had already gone a significant way to remedy your past breaches of professional standards.

Mr Hoskins submitted that a caution order was available if the panel determined that there was no future risk to the public or a risk of patient harm. He explained that the caution would be public and that it would provide a more long serving sanction to mark what was not acceptable conduct than a suspension order. He also submitted that a caution order would sufficiently address the public interest.

Mr Hoskins further submitted that a three year caution order was appropriate as the past 18 months have been distressing and have partly served the purpose of a caution order for a significant period of time. He invited the panel to determine the proportionate length of time it deemed would be appropriate. This was because the panel must not impose more than what is necessary when taking into account the fact that there was no risk to patients and the order was being made on public interest grounds alone. The only reason for a suspension order, he submitted, would be to address the need to mark

publically that your behaviour was deplorable, which could also be done by a caution order.

Mr Hoskins then submitted if the panel did not deem a caution order appropriate, then it should consider a short suspension order. This was because a short period of suspension of months, given the role of proportionality, would suffice.

Mr Hoskins submitted that there was no requirement for a review because the public interest was marked by you giving your evidence. You demonstrated insight and this was not a case where you needed to reflect and present further insight to another panel. He submitted that you were entitled to closure and some finality to these proceedings.

Mr Hoskins submitted that if a strike-off order was imposed, then the panel had fallen into grave error by falling foul of proportionality and misinterpreting the seriousness of the case, because a strike-off order went beyond what was required based on what the panel had found thus far.

The panel heard the advice of the legal assessor, who referred to the NMC's Sanction Guidance and the cases of:

CHRE v *NMC and Leeper* [2004] EWHC 1850 (Admin)
Parkinson v *NMC* [2010] EWHC 1898 (Admin)
Moijueh v *NMC* [2015] EWHC 1999 (Admin)

The panel considered the following factors to be aggravating in your case:

- your conduct was premeditated
- your repeated dishonesty in producing and then submitting falsified certificates persisted over a period of 18 months
- your actions were sophisticated because of the methods you used to forge a significant number of certificates

- your actions undermined the public confidence in a system that requires nurses to produce proper certification of their qualification
- you were a senior nurse holding a Band 7 position with previous responsibility for training
- your actions carried a risk of patient harm

The panel considered the following factors to be mitigating in your case:

- your previous good character, unblemished career and testimonials in regard to your longstanding successful career both before and after the incidents
- your demonstration of significant insight into your misconduct, including in relation to the impact on the reputation of the profession
- your early admissions at the start of this hearing
- your demonstration of remorse in regard to your misconduct

The panel considered the SG as to whether your misconduct was serious. It determined that it was because it was premeditated and prolonged over 18 months. There was personal gain, [PRIVATE], and a risk to patients.

In considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'…*the case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise committee wants to mark that the behaviour was unacceptable and must not happen again.*'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. A caution order was the least restrictive order a panel could impose and having determined that your misconduct was deplorable and serious, it could not see that the public interest would be served by imposing a caution order. The panel decided that it would therefore be neither proportionate nor in the public interest to impose a caution order.

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

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 misconduct identified in this case was not something that can be addressed through further training and your impairment was not related to your clinical practice.

Furthermore the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not meet the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a 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 deep-seated attitudinal problems
- the panel is satisfied that the nurse has insight and does not pose a significant risk of repeating behaviour

The panel was satisfied that you had shown insight and that you do not pose a significant risk of repeating your misconduct. However, the panel determined that your case was clearly not one involving a single instance of misconduct. More significantly, however, the panel did find there to be evidence of an attitudinal problem which even if not deep-seated appeared to influence your conduct over a period of some 18 months.

This was demonstrated by the fact that you, a senior nurse who had yourself been a trainer, created 16 different certificates in several different ways, with different and incorrect information, as well as bearing the signatures of people who either did not exist or who were not trainers at the relevant time. You did this in order to provide

multiple training certificates to different agencies on four separate occasions between January 2016 and mid-2017. In reliance on those certificates, you then worked for those agencies providing nursing care to patients in 18 shifts over 15 months, and thereby could have put them at risk of harm.

Although the panel could understand how [PRIVATE] might cause you to panic and make ill-advised decisions initially, the panel could not accept that this would be the case over such a long period of time. You would have had ample opportunity to reflect on the seriousness of what you were doing, and the panel considered that you repeated your actions not because of continuing panic about [PRIVATE], but because your deception had not been exposed on the first occasion.

The panel differentiated between your misconduct and instances where nurses might fabricate entirely non-existent expertise in a nursing area. The panel therefore determined that the potential impact of your deceit was not as serious as it may have first appeared, as you had been previously qualified in the areas that you falsified certificates for and you were not pretending to have skills that you had never been certified to have. However, the panel felt that the effect on public confidence of such wide ranging deceit over such a long period meant that your misconduct was clearly at the highest end of the spectrum of impairment of fitness to practise.

The panel considered whether a striking-off order would be proportionate in your case. At this stage, the panel balanced the public benefit in retaining the services of an otherwise clinically competent nurse against the harm which your misconduct had done to the reputation of the profession and the public's confidence in the profession. Taking account of all the information before it, and taking account of all the mitigation provided to the panel on your behalf, the panel nevertheless concluded that a striking-off order is necessary and it would not be disproportionate in this case. Whilst the panel acknowledges that a striking-off order has a punitive effect, it would not be unduly punitive in your case to impose a striking off order.

The panel determined that although there are in your case mitigating circumstances, there had been a clear breach of fundamental tenets of the profession. As such, the panel considered that, in your case, the misconduct was fundamentally incompatible with remaining on the register.

Balancing all of these factors the panel has concluded that a suspension order would not be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause you. However this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a striking-off order was necessary in this case to mark the seriousness of the misconduct.

Determination on interim order

The panel considered the submissions made by Miss Dongray that an interim suspension order should be made on the grounds that it is in the public interest, given that the panel determined that a striking-off order is the only appropriate sanction in your case. Miss Dongray submitted that the public would be surprised if you were entitled to practise during the appeal period.

She reminded the panel that the bar for public interest grounds alone was high, but submitted that the high bar had been met in your case, as the panel had concluded your misconduct was so serious as to justify imposing a striking-off order.

Miss Dongray applied for the interim order to be for 18 months to cover the appeal period.

The panel took account of the submissions made by Mr Hoskins on your behalf that he opposed the application to impose an interim order. He submitted that the bar of necessity is high and is not met in this case. He stated that although the public would be surprised if you were allowed to practise, he submitted that this surprise does not necessarily meet the threshold of necessity.

Mr Hoskins further submitted that imposing an interim order for 18 months was disproportionate, as it should be reasonably expected that a simple appeal case would be concluded in a time period shorter than 18 months.

The panel accepted the advice of the legal assessor, who referred to the case of *R (ex parte Shiekh)* v *GDC* [2007] EWHC 2972 (Admin).

The panel took into account its finding that there is no current risk of harm to patients, and the evidence from testimonials indicates that you have been practising safely. The panel was not satisfied that an interim suspension order is necessary in the public

interest because it determined that the facts of your case did not meet the high bar of necessity.

That concludes this determination.