

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

**Substantive Order Review Hearing**

**24 – 25 June 2019**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

<b>Name of registrant:</b>	Hazel Wylie
<b>NMC PIN:</b>	89E0413S
<b>Part(s) of the register:</b>	Registered Nurse – Sub Part 1 RN3: Mental Health Nursing – March 1994
<b>Area of Registered Address:</b>	Scotland
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Deborah Jones (Chair, lay member) Linda Pascall (Registrant member) Rama Krishnan (Lay member)
<b>Legal Assessor:</b>	Graeme Henderson
<b>Panel Secretary:</b>	Tara Hoole
<b>Miss Wylie:</b>	Not present and not represented in her absence
<b>Nursing and Midwifery Council:</b>	Represented by Sylvia McLean, NMC Case Presenter
<b>Order being reviewed:</b>	Suspension order (12 months)
<b>Fitness to Practise:</b>	Impaired
<b>Outcome:</b>	Striking-off order to come into effect immediately in accordance with Article 30 (2)

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Wylie was not in attendance, nor was she represented in her absence.

The panel was informed that the notice of this hearing was sent to Miss Wylie on 16 May 2019 by recorded delivery and first class post to her registered address. The panel noted that notice of this hearing was delivered to Miss Wylie's registered address on 17 May 2019 under the printed name "WYLIE".

The panel accepted the advice of the legal assessor.

In the light of the information available the panel was satisfied that notice had been served in accordance with Rules 11 and 34 of The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended February 2012) (the Rules).

## **Proceeding in absence**

The panel then considered proceeding in the absence of Miss Wylie. The panel was mindful that the discretion to proceed in absence is one which must be exercised with the utmost care and caution.

The panel considered all of the information before it, together with the submissions made by Ms McLean, on behalf of the Nursing and Midwifery Council (NMC) and the documentation submitted for Miss Wylie. The panel accepted the advice of the legal assessor.

Although Miss Wylie was represented at both the substantive hearing in August 2018 and the first review hearing in January 2019, her representative advised that she would no longer be acting for Miss Wylie by email dated 7 June 2019. In that email the NMC was informed that "Miss Wylie does not intend to attend the review hearing on 24 June 2019."

Ms McLean drew the panel's attention to the email correspondence from Miss Wylie, dated 15 June 2019, in which she states "I have been advised due to my health at present, i [sic] should not appear [at the hearing]." and "I will submit a statement if the hearing is to proceed in my absence." Within this email she says "I hope in the coming months i [sic] will start to recover and I would like [the] hearing to be postponed if possible but understand this may not be possible".

Ms McLean submitted that there was an onus on Miss Wylie to engage with her regulator and that Miss Wylie had not provided any independent evidence of any matters relating to her health, despite being asked by the NMC on 17 June 2019 to produce this, nor had a statement been received from her. Ms McLean advised the panel to view Miss Wylie's assertions with caution given the allegations of consistent and continued dishonesty.

Further Ms McLean drew the panel's attention to Miss Wylie's email dated 18 June 2019 in which she states "I feel that it may be several months before i [sic] would be fit to appear and i [sic] understand the urgency of this matter." Ms McLean submitted that there was a public interest in cases being resolved expeditiously and that, in the absence of any evidence as to when Miss Wylie may be fit to attend a hearing, the panel should proceed in her absence today.

Ms McLean reminded the panel that there were two witnesses in attendance to give evidence in this case, who would be inconvenienced should the hearing adjourn, and asked the panel to take this into consideration when making its decision.

Finally, Ms McLean submitted that, whilst the panel should consider fairness to Miss Wylie, it should also consider fairness to the regulator when considering whether to proceed in Miss Wylie's absence.

Prior to reaching a decision on proceeding in Miss Wylie's absence the panel was advised of several matters:

- Miss Wylie’s NMC case officer was on leave and their email account was not accessible to be checked as to whether Miss Wylie sent in a statement;
- Miss Wylie had been contacted by a different NMC case officer who has spoken to Miss Wylie and sent the following update:

“I just spoke to the registrant who said she sent her statement on Saturday. She’s at [PRIVATE] currently but will be home in an hour or so and will send me it then.

She said a “crucial” witness statement from her friend was supposed to have been sent by Friday but she still hasn’t received it. She’s going to have another attempt at obtaining this and reiterated how important it is.”

In light of this information the panel considered it appropriate to adjourn for an hour to allow Miss Wylie to re-send her statement.

The panel reconvened after an hour and a quarter. Ms McLean advised it that no statement had been received from Miss Wylie. Further the NMC case officer had tried to telephone Miss Wylie on two occasions in the last hour but had not received a response.

The panel therefore moved on to consider whether to proceed in Miss Wylie’s absence.

The panel noted the email correspondence from Miss Wylie and the submissions of Ms McLean. The panel, in particular, noted the contents of Miss Wylie’s email of 18 June 2019 in which she states “[PRIVATE]” and “I understand that you will, in all likelihood [sic] not be able to postpone this case until my health improves”.

The panel noted from her correspondence that Miss Wylie is aware of today’s hearing. Further, Miss Wylie has indicated in emails dated 15 and 17 June 2019 that she is unable to attend this hearing. There is an additional email from Miss Wylie’s representative, dated 7 June 2019, which also advises that Miss Wylie will not be

attending and that the representative has been instructed to come off record and therefore will no longer be acting as her representative in these matters.

The panel noted there is no independent medical evidence before it to support Miss Wylie's reasons for not attending the hearing. The panel noted that Miss Wylie had ample opportunity to obtain a medical report. Further the panel noted Miss Wylie has not provided a clear indication as to when she may be fit to attend any future hearing. As such the panel had no reason to believe that an adjournment would guarantee Miss Wylie's attendance in the near future.

The panel noted that there were two witnesses in attendance to give evidence before the panel who would be inconvenienced should the hearing adjourn. Miss Wylie had informed the NMC, by email dated 15 June 2019, that she did not wish to challenge the evidence of Dr 2 and she agreed with the contents of his statement. Miss Wylie, within her statement, had provided comment on Ms 1's credibility which could be put to the witness.

Having allowed Miss Wylie time to resubmit her statement, and weighing the interests of Miss Wylie with those of the NMC as well as the public interest in an expeditious disposal of this hearing the panel determined to proceed in Miss Wylie's absence.

### **Decision and reasons on adjournment**

After the panel had heard live evidence from the two witnesses and prior to hearing submissions from Ms McLean, the panel was informed of the receipt of further correspondence from Miss Wylie which states:

"I am still [PRIVATE] and cannot submit my original statement till i [sic] get home. I could compose another short statement just now. [PRIVATE] says she can provide a statement today but not till after 2pm!"

The panel was of the view that Miss Wylie should be afforded the remainder of the day to submit whatever she wished to the panel, given her assertions that she had sent a statement to her NMC case officer on 22 June 2019, and was not in a position to resend this in time for the panel to consider. The panel was mindful of the need to be fair to Miss Wylie as well as to the NMC. The panel had heard from the witnesses, and Miss Wylie's position, from her correspondence, had been put to them. The witnesses, therefore, would not be inconvenienced by this adjournment. The panel noted that the NMC case officer was on leave but would be available the following day and therefore would be able to forward Miss Wylie's statement, which Miss Wylie claimed to have sent on 22 June 2019, for the panel to consider.

The panel therefore determined to adjourn until 10:00 on Day 2.

The panel resumed on Day 2 and was provided with further email correspondence from Miss Wylie. This comprised of a statement purportedly from [PRIVATE], dated 24 June 2019, several emails between Miss Wylie and the NMC as well as a statement, dated 24 June 2019, from Miss Wylie. An additional email was provided to the panel from Miss Wylie's NMC case officer who stated that they had not received a statement or email from Miss Wylie on 22 June 2019 or at any point since. The panel received and read the documentation before it and proceeded to hear closing submissions from the NMC case presenter.

## **Decision and reasons on review of the current order:**

The panel decided to impose a striking-off order. This order will come into effect immediately in accordance with Article 30 (2) of the Nursing and Midwifery Order 2001 (as amended) (the Order).

This is the second early review of a suspension order, originally imposed by a Fitness to Practise panel on 31 August 2018 for twelve months. The first early review hearing on 10 January 2019 was adjourned and the original suspension order continued. The current order is due to expire on 2 October 2019.

The panel is reviewing the order pursuant to Article 30(2) of the Order.

The charges found proved, some by way of admission, which resulted in the imposition of the substantive order were as follows:

That you:

- 1) between 06 May – 20 May 2016, submitted an application form to NHS Greater Glasgow and Clyde which was inaccurate in that it:
  - a) stated you were 'currently working in an Acute Adult Mental Health Ward in Stobhill Hospital' and provided details of your work there on a 'daily basis'.
  - b) provided Nurse A as a referee and indicated that she was a 'Ward Manager'.
- 2) Your actions at charge 1a) were dishonest in that you knew you were not currently working in an Acute Adult Mental Health Ward in Stobhill Hospital.
- 3) ...
- 4) on 16 June 2016, in the course of an interview for the post of Community Staff Nurse at NHS Greater Glasgow and Clyde, gave inaccurate answers to questions in that you stated that:

- a) you had chosen to return to a hospital based setting, namely Stobhill Hospital, in 2012.
  - b) you were currently employed as a nurse within IPCU Ward of Stobhill Hospital.
- 5) Your actions at charge 4a) were dishonest in that you knew you had not worked at Stobhil Hospital at in 2012.
- 6) Your actions at charge 4b) were dishonest in that you knew you were not currently working within IPCU Ward of Stobhill Hospital.

The original panel determined the following with regard to impairment:

“Although there is no evidence of actual harm, the panel was mindful of the potential for harm identified above. You were applying for a nursing post by claiming recent experience you did not have and deprived your potential employer from making an informed decision on the suitable candidate to provide safe care in the psychiatric community nurse post. The panel was therefore satisfied that there was an unwarranted risk in your actions.

The panel had little doubt that any reasonably well informed member of the public knowing you had undermined the selection process, for a post that involved delivering safe care to vulnerable group of patients, by your dishonest conduct would be highly concerned. You clearly brought the profession into disrepute

The panel was also satisfied that you breached a fundamental tenet of the profession as reflected in the preamble to paragraph 20 of the code narrated above.

Further, this is a case involving dishonesty. It was of concern to the panel that, at your last substantive hearing and the subsequent review hearing, you gave

assurances that you would not be dishonest in the future. The panel noted the similarity in the assurances you gave at that time, to the assurances you have provided this panel. In light of the repeated dishonesty a mere two months later, the panel could place little reliance on your assurances,

When considering future risk the panel had regard to the evidence of Ms 8 and your live evidence, as well as the documentary evidence.

Ms 8 was a character witness who provided background evidence of your management style. She is an enthusiastic supporter of you who was able to contrast her experience of working in the home under different management. The panel was mindful that she was not your manager, but someone who was managed by you and that she described herself as your friend. Much of what she said was supported by other evidence to the effect that you are a good nurse and manager. She was unable to assist the panel in its assessment of future risk.

The panel considered your live evidence at this stage to be of limited assistance. You appeared to lack full insight and, in particular, did not provide sufficient assurances or practical steps you will take towards remediation, to reassure the panel that the behaviour would not be repeated. ...

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

There has been no repetition since June 2016, however the panel noted that you have been under investigation since that time and have only been in your new post from April 2018. Although you have expressed genuine remorse, the panel considered it is difficult to remediate dishonesty. In the panel's view your lack of insight was demonstrated by your statement "I will do anything possible to remediate my actions. I know that my practice is no longer impaired..." The panel

finds that your lack of insight and the identified pattern of dishonesty, in particular given the short period of time that had elapsed since the last hearing and noting your original dishonest behaviour was also related to patient safety, suggests that a risk of repetition remains.

Accordingly the panel found that your fitness to practise is currently impaired on both public protection and public interest grounds.

The original panel determined the following with regard to sanction:

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the serious nature of the conduct and the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to take no action.

Next, 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 and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel reflected on the aggravating features identified and considered that your misconduct was not at the lower end of the spectrum of fitness to practise. It was satisfied that a caution order would be inappropriate in view of the seriousness of the case and the risk of repetition identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on 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 took into account that you appear to have been working well under supervision in your current post as deputy manager. However, the panel was mindful that the conduct identified in this case does not relate to an area of your clinical practice which is capable of remedy through conditions. The panel was

satisfied that workable conditions of practice could not be formulated to address the serious nature of the concerns in this case. The panel decided that it would be neither proportionate nor in the public interest to impose a conditions of practice order.

The panel next considered whether a period of temporary removal from the register would be appropriate.

The panel had regard to the SG in relation to the level of dishonesty in your case. Having taken this guidance into account the panel was satisfied that it could not be categorised as being at the lower end of the scale, nor could it be categorised at the higher end. It was however satisfied, that it did raise an issue about whether you should be allowed to remain on the register. The panel carefully considered the factors in the SG which may be relevant for the imposition of a suspension order and balanced this with the aggravating features of this case. It noted that your case does not fulfil any of the criteria for a suspension order to be appropriate. It noted in particular that

- you have not yet demonstrated full insight,
- this is your second regulatory proceeding in a three year period
- this case involved an abuse of trust of the public and appears to be an escalation, in that there has been another incident of dishonesty over and above that found by a previous panel.
- there have now been four incidents of dishonesty in total
- your dishonesty was repeated within a very close timeframe to a previous hearing where you had successfully persuaded a panel that there would be no repetition
- there was potential patient risk had you been successfully appointed
- the panel was satisfied that there was an element of personal gain given that you were interviewed for a remunerated post
- your dishonesty was maintained from around 6 -20 May 2016 when you knew the application had been submitted, during the period you knew you had been invited for interview, during the interview and for a period after you were verbally offered the post

- the panel has identified a risk of repetition.

However, the panel also noted that you had experienced difficult personal and health circumstances at the time. It further noted the positive references you have provided indicating that you are making a difference in your current workplace and that you have disclosed these proceedings to your current employer. In addition, you have engaged with supervision in your workplace. The panel noted that this was put in place by your employer as a condition of employment following your disclosure of these NMC proceedings to them. The panel placed reliance on the positive reference from your current Home Manager dated 22 August 2018 which attested to your competence and dedication in your current post. The panel was further encouraged by your evidence that you are using your most recent experience of regulation to train staff at the Home. Taking these mitigating factors into account the panel considered that a suspension order, at this time, may be appropriate.

The panel was mindful of the professional standards that registered nurses and midwives must uphold. Nurses are expected to put the interests of patients and service users first and promote trust through professionalism. Patients and members of the public expect registered nurses to demonstrate honesty and integrity. The panel also took into account that in the SG it is said that “the most serious kind of dishonesty is when a nurse or midwife deliberately breaches the professional duty of candour to be open and honest when things go wrong in someone’s care. However, because of the importance of honesty to a nurse or midwife’s practice, dishonesty will always be serious”.

The panel had regard to the key considerations that it had to resolve in relation to whether or not to impose a striking-off order. It considered that public confidence could still be maintained in the profession and the NMC if it imposed an order for the maximum period of suspension. It also considered that striking-off was not the only sanction which would be sufficient to protect the public interest. The panel was persuaded that the seriousness of the case was not incompatible with on-going registration. It concluded that the public interest would be served by

allowing you one further opportunity to demonstrate that you could return to practise and not act dishonestly in the future following this period of suspension.

On the basis that there was no actual patient harm and no actual financial gain the panel was satisfied that a striking-off order would be disproportionate at this stage. It concluded that suspension for the maximum period of 12 months would meet the public interest requirements of this case and allow a sufficient period of time for you to take stock of your conduct and the effect of it

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 protect the public and 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.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order. A reviewing panel would require to see tangible proof that you have developed your insight fully such that you are able to truly reassure that panel that your conduct will never be repeated. As such you will require to take a proactive role in persuading any reviewing panel that your assurances are genuine.

As such the reviewing panel may benefit from the following:

- Testimonials addressing your honesty and integrity.
- Your attendance at the review and evidence of your insight and how you have remediated.

The first review hearing was informed of the following by the case presenter:

“...following your substantive hearing in August 2018, matters came to light that called into question the authenticity of crucial documentation relied upon by the previous panel in making its decision.

He told the panel that it has been alleged by [PRIVATE] that he did not write the report dated 26 June 2018 [PRIVATE]. He said it is further alleged by your former manager that she did not write the reference dated 22 August 2018 or supervision records presented to the previous panel. He reminded the panel that you had declared under oath who had produced each of these documents and presented them as genuine documents.

[Case Presenter] told the panel that these were serious allegations which, if found proved, may call into question the appropriateness of the current order. He submitted that, should you dispute these allegations, the panel would be required to conduct a fact finding exercise to establish the validity of these allegations.”

At the first review hearing Miss Wylie, through her representative, disputed the claims of both Ms 1 and Dr 2.

The first reviewing panel determined the following in its decision to adjourn proceedings:

“The panel carefully considered the matter and was of the view that the new allegations are extremely serious. It invited the NMC to look at these allegations holistically and consider all appropriate actions. The panel determined that it was impossible to resolve the dispute on the new allegations today without hearing evidence from the relevant witnesses.

The panel was satisfied that it was appropriate for it to send the case to an evidentiary hearing. It is not unusual for substantive order review hearings to involve the leading of evidence. This is particularly so with regard to health cases where it is more usual than not for an expert to provide witness evidence on the health of a registrant.

The panel also considered that it was appropriate for these allegations to be considered at a review hearing as they are inexorably linked to the original decision.

It considered whether suspension was an appropriate sanction, the original panel noted that “your case does not fulfil any of the criteria for a suspension order to be appropriate.” However, the panel later considered the mitigating factors, namely the letters from [PRIVATE] of 26 June 2018 and manager of 22 August 2018. The NMC are now alleging that both of these crucial documents are not genuine. In the event of a reviewing panel being satisfied that these documents are not genuine, it is likely to undermine any mitigating factors. If the allegation is confined to the genuineness of the documents submitted in mitigation, then there may be better reasons for considering it as part of a review rather than commencing a new investigation.

Accordingly, the panel adjourned this hearing and requested that it be listed for a further 3 days where witnesses can be called, evidence led and submissions heard to allow a fully informed decision to be made. The panel noted that this was an unusual situation for a reviewing panel to be presented with but was satisfied that evidence could be heard, in accordance with the Rules, at a review hearing.

The panel heard no submissions on your current impairment. It determined that the position in this regard remains unchanged. As you are subject to a suspension order until 2 October 2019, the public remains protected and no variation to this suspension order is required.”

### **Decision on current fitness to practise**

The panel has considered carefully whether Miss Wylie’s 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. It has noted the decision of the last panel. However, it has exercised its own judgment as to current impairment.

The panel has had regard to all of the documentation before it, including email correspondence and documentation from Miss Wylie, witness statements and related documentation from Ms 1 and Dr 2. It has taken account of the submissions made by Ms McLean on behalf of the NMC.

Ms 1 gave evidence to the panel. Ms 1 was the manager for Adencraig Care Home (the Home) where Miss Wylie was employed at the time of the substantive hearing in April and August 2018. Following the conclusion of the substantive hearing Ms 1 raised concerns with the NMC regarding the letter produced at Miss Wylie's substantive hearing, purportedly from her manager, dated 22 August 2018, and Ms 1's belief that this was not authentic. Ms 1 confirmed for the panel that the letter dated 22 August 2018 provided to the NMC substantive hearing by Miss Wylie in August 2018 and signed off in Ms 1's name was not written by her. Ms 1 told the panel that the first time she had seen this letter was when it was sent to her by an NMC case officer following her raising concerns. Ms 1 confirmed that she had never provided a statement of support for Miss Wylie.

Ms 1 told the panel that she became aware of the NMC proceedings involving Miss Wylie when her line manager had called and advised he had seen Miss Wylie's name on the NMC website. Ms 1 confirmed that Miss Wylie had not volunteered this information to her but that Miss Wylie had confirmed the NMC proceedings when questioned. Ms 1 told the panel that the supervision records Miss Wylie had presented to the substantive hearing, dated 29 May 2018, 27 June 2018 and 17 August 2018, were not authored by her. She told the panel that the records provided are typed but that she always hand writes her supervision records. Ms 1 confirmed to the panel that she did not write the supervision records provided to the substantive hearing. In her email correspondence Miss Wylie states "[Ms 1] has been made to resign with immediate effect from her post as manager... for submitting false documentation... so I

think her credibility as a witness should be called into question”. This statement was put to Ms 1 who confirmed this was not true.

Overall, the panel considered Ms 1 to be a credible and reliable witness. She answered questions directly and clearly and assisted the panel to the best of her ability. The panel had no reason to believe Ms 1 would have fabricated any of her evidence.

The panel next heard evidence from Dr 2 [PRIVATE]. Dr 2 explained that he had been contacted by the NMC and asked to verify the authenticity of a report purported to have been authored by him. This was the report Miss Wylie presented to the substantive hearing, dated 26 June 2018. Dr 2 told the panel that, upon looking at the report, he was immediately able to tell it was not genuine as it was not on headed paper and did not bear his signature. Dr 2 told the panel that it was customary for an organisation requesting a report to directly contact [PRIVATE] but that occasionally a report would be requested by individuals. Dr 2 confirmed that Miss Wylie had not requested this report from him and he had never provided a report like this for her in the past. Dr 2 told the panel he could not recollect having seen Miss Wylie in the last 18 months.

Miss Wylie, in an email to the NMC dated 8 February 2019, states “I do believe [Dr 2] did not write the letter... i [sic] have known him for many years, as have my family”. Dr 2, when questioned, told the panel that he would not say he had a knowledge of Miss Wylie and her family and certainly not to the level of knowledge that is contained within the report. Dr 1 told the panel that he had checked [PRIVATE] and the information presented in the report dated 26 June 2018 did not match [PRIVATE]. Dr 1 stated “lots of things in there never happened, [PRIVATE]” and said he would not make a comment in a report to the effect that Miss Wylie had a deep sense of remorse and insight.

Miss Wylie’s email of 8 February 2019 continues stating “[PRIVATE] gave me the letter, after she said she picked it up from [PRIVATE]”. Dr 1 was asked whether it was possible for someone to pick up a report for someone else. He told the panel it would be very unusual for a report to be released to someone other than the person requesting it and it would require clear instructions from the person the report related to and proof of identity before confidential information would be released to someone else.

The panel considered Dr 2 to be a clear, credible and reliable witness. Dr 2 presented as a professional person and was of significant assistance to the panel.

In her closing submissions Ms McLean urged the panel to accept the evidence of the witnesses and invited the panel to find that the documentation provided to the substantive panel was not genuine. Ms McLean took the panel to various sections of the transcript of the substantive hearing and highlighted where, in the NMC's view, Miss Wylie's evidence was contradicted by the evidence of Ms 1 and Dr 2.

Ms McLean reminded the panel that Miss Wylie has had two NMC cases in the last three years and two panels have found that she had acted dishonestly. Ms McLean submitted that this was an unusual case in that the panel were being asked to make a finding of fact as to the authenticity of the documentation. She reminded the panel that this was not a case of making comment on the previous panel's findings but rather making an assessment in light of the information available to it whether Miss Wylie's fitness to practice remains impaired.

Ms McLean submitted that Miss Wylie's conduct had not been remediated. She submitted that Miss Wylie has demonstrated a propensity for dishonesty. She submitted that the recommendations of the original panel have not been followed, there are no positive testimonials before the panel and Miss Wylie has not attended this hearing. She submitted that the statement provided on 24 June 2019 provides no new information and shows limited insight.

Ms McLean submitted that, given the lack of insight or remediation and that the documentation relied on in mitigation at the original hearing is not genuine, the panel may consider a striking-off order to be the appropriate order in this case.

The panel heard and accepted the advice of the legal assessor who referred the panel to a number of cases including *Taylor v General Medical Council* [1990] 2 AC 539, PC and *Obukofe v General Medical Council* [2014] EWHC 408 (Admin), and *IVEY v Genting Casinos* [2017] UKSC 67 .

He told the panel that, whilst there is an element of fact finding in this review, this panel should not revisit the previous panel's decision but look at all of the new evidence before it today and make a decision as to whether Miss Wylie's fitness to practise is impaired as of today.

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 Miss Wylie's fitness to practise remains impaired.

The panel had regard to the documentation and emails from Miss Wylie. The panel noted, in her statement dated 24 June 2019, Miss Wylie continues to blame others. She advises the panel that [PRIVATE] composed the falsified report and says that she (Miss Wylie) did not wish to submit the report to the original panel as she did not think it looked genuine but she was persuaded to do so by [PRIVATE] at the time. The panel noted Miss Wylie's assertion along with the email statement reportedly from [PRIVATE], however the panel was unable to test the veracity of this assertion without hearing from [PRIVATE] and as such was unable to attach significant weight to this statement. The panel considered this explanation to be inherently implausible. Miss Wylie's explanation of this appears to have changed since the substantive hearing. The panel noted the position adopted by Miss Wylie at the original hearing where she stated under cross-examination "[PRIVATE]". In that evidence she also claims to have visited [PRIVATE]. She has since stated in correspondence that it was in fact [PRIVATE] who collected the report and she now claims [PRIVATE] composed this.

Further, Miss Wylie calls into question the credibility of Ms 1; Miss Wylie maintains that Ms 1 was asked to resign from the home and that she (Ms 1) had created false documentation. Miss Wylie maintains that the supervision records are genuine stating "[Ms 1] Carried [sic] out my supervisions and her signature is at the bottom of the page. The signature is identical to that of all her other supervision records". The panel reminded itself of the evidence of Ms 1 who had told the panel the supervision

documents were not created by her and how she had reached this conclusion. Ms 1 had also refuted Miss Wylie's claim that she had been asked to resign, stating "that's not true".

Regarding Miss Wylie's insight, the panel noted that the last panel found that Miss Wylie lacked insight. This panel considered that Miss Wylie has shown no improvement in terms of her insight; she continues to blame others and her personal circumstances for her behaviour. The panel noted, in her statement dated 24 June 2019, Miss Wylie says that she continues to strive to reflect deeply on her actions and her practice, and says she is deeply sorry for all her actions and for not attending the hearing. The panel has no evidence of any reflection from Miss Wylie and she has demonstrated no understanding of the impact of her behaviour on her colleagues, the reputation of the profession or public confidence in the integrity of nurses.

Miss Wylie accepts she "made some serious errors of judgement" and her "actions in the past have fallen well short of what the profession expects". However, the panel considers that Miss Wylie continues to blame her personal circumstances for her behaviour and there is nothing to suggest that she has learnt anything.

The panel was able to assess the authenticity of the specific documentation and has determined that the report dated 26 June 2018, the letter of support dated 22 August 2018 and accompanying supervision records were not authored by the witnesses it has heard evidence from. The panel observed that this would appear to be several instances of false documentation being created to Miss Wylie's advantage.

The panel noted the transcripts from the original hearing in which Miss Wylie states, under oath "I see [PRIVATE] [Dr 2] on a monthly basis as well...". The panel reminded itself of Dr 2's evidence that he could not recall having seen Miss Wylie in the last 18 months.

The panel had regard to the IVEY test. There was no evidence regarding how these documents were created. Miss Wylie must have known that these documents were false and were being used in her defence at the original hearing. In her statement to the

NMC dated 24 June 2019 she stated that she was aware that the medical report was not genuine at the time. The use of these documents as part of her defence would have been regarded as dishonest by the standards of ordinary, decent people.

The panel has reviewed all of the documentation before it and can find no evidence of any remediation on the part of Miss Wylie. The panel noted that this misconduct is serious and is inherently difficult to remediate. The panel noted that dishonesty may be remediated in some situations where a nurse has shown remorse, has realised they acted dishonestly and assured a panel it will not happen again. The panel noted Miss Wylie has assured two previous panels, in two separate cases, that she had learnt from her behaviour and it would not happen again. This panel noted that Miss Wylie has not provided such assurances at this hearing.

During the course of this hearing time was spent by the panel waiting to ascertain whether or not Miss Wylie had sent a statement to her NMC case officer on 22 June 2019. Although she assured another case officer that such a statement was sent there is no evidence that she has done so. Had she sent such a statement she would have been able to forward a copy from her email account. The panel considered this to be another example of erratic and misleading behaviour by Miss Wylie.

The panel noted it has no evidence of how Miss Wylie is keeping her skills and knowledge up to date or any evidence of her personal circumstances or of the medical conditions she reports she has.

The last panel determined that Miss Wylie was liable to repeat matters of the kind found proved. This panel has received no information to assure it that there is no risk of repetition. Conversely, the panel considered that there is a clear pattern of dishonesty established by the original panel and determined there is a high risk of repetition of this behaviour. In light of this the panel determined that Miss Wylie remains liable to repeat matters of the kind found proved.

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 both public protection and public interest grounds is required.

For these reasons, the panel finds that Miss Wylie's fitness to practise remains impaired.

### **Determination on sanction**

Having found Miss Wylie's 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 in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered whether to impose a caution but concluded that this would be inappropriate in view of the risk of repetition identified and seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered substituting the current suspension order with a conditions of practice order. The panel noted the charges in this case do not relate to Miss Wylie's clinical competence but rather to Miss Wylie's dishonest conduct and behaviour and the provision of falsified documentation. The panel therefore concluded that there were no appropriate conditions which could be formulated in Miss Wylie's case.

Before moving on to consider the higher sanctions the panel had regard to the SG on seriousness of dishonesty, given it is central to this case, which states:

“Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse or midwife should be allowed to remain on the register will involve:

- ...
- premeditated, systematic or longstanding deception

Dishonest conduct will generally be less serious in cases of:

- one-off incidents
- opportunistic or spontaneous conduct
- no direct personal gain
- ...

The law about healthcare regulation makes it clear that a nurse or midwife who has acted dishonestly will always be at risk being removed from the register.”

The panel considered that Miss Wylie’s dishonesty has been premeditated and longstanding, it was not a one-off incident nor was it opportunistic or spontaneous conduct. The panel considered that Miss Wylie’s dishonesty could be seen to have been for personal gain.

The panel moved on to consider the imposition of a further suspension order. The panel had regard to the SG which states a suspension order may be appropriate circumstances where there is:

- a single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident

- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour
- ...
- ...

The panel reminded itself that Miss Wylie has a previous case relating to dishonesty as well as the original charges in this case. In addition the panel has concluded that the documentation provided to the substantive hearing in mitigation, which the original panel gave a lot of weight to, has been found not to be genuine. The panel was also of the view that Miss Wylie has exhibited a pattern of dishonest behaviour. The panel was not satisfied it could conclude there was no evidence of repetition of dishonest behaviour since the original incidents. Further, the panel determined at the impairment stage of this hearing that Miss Wylie has no insight and as such poses a significant risk of repeating her dishonest behaviour.

The panel therefore moved to consider the SG in respect of a striking off order which states:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel considered that the repeated nature of Miss Wylie's dishonesty raised fundamental questions about her professionalism. The panel noted Miss Wylie has not demonstrated insight into the seriousness of her behaviour or the impact of this on her colleagues or the reputation of the profession, nor has she remediated the misconduct identified. The panel was of the view that public confidence in the profession cannot be maintained by allowing Miss Wylie to remain on the Register. The panel reminded itself

that Miss Wylie has failed to address any of the recommendations of the previous panel and determined that a further period of suspension would not serve any useful purpose in all of the circumstances. The panel determined that it was necessary to take action to prevent Miss Wylie from practising in the future and concluded that the only sanction that would adequately protect the public, serve the public interest and maintain professional standards was a striking-off order. The panel therefore directs the registrar to strike Miss Wylie's name off the register.

In accordance with Article 30 (2) of the Nursing and Midwifery Order 2001 this striking-off order will come into effect immediately.

This decision will be confirmed to Miss Wylie in writing.

That concludes this determination.