Name of registrant: Mr Thomas Michael Smith
NMC PIN: 10E0240E
Part(s) of the register: Registered Nurse – sub part 1
Adult Nursing (17 July 2010)
Area of Registered Address: England
Type of Case: Misconduct
Panel Members: James Hurden (Chair, Lay member)
Pauleen Pratt (Registrant member)
Gill Madden (Lay member)
Legal Assessor: Nigel Pascoe QC
Panel Secretary: Anjeli Shah
Mr Smith: Not present and not represented in absence
Nursing and Midwifery Council: Represented by Laura Paisley, Case Presenter
Facts proved: 1 a), 1 b), 2, 3 a), 3 c), 3 d), 4, 5
Facts not proved: 3 b)
Fitness to practise: Impaired
Sanction: Striking-off Order
Interim Order: Interim Suspension Order for 18 months
Details of charge (as read):

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, ("The Trust"),

1. Led Colleague A into believing that you had passed the Advanced Nurse Prescriber Course ("the course") in that you,

(a) In or around November 2015 told Colleague A you did not need to wear a white hat in theatre as you had passed the course;

(b) On 13 October 2016 sent an email to Colleague A following a request where you were asked for documentation to show you had completed the course, that you had recently moved house and would need time to get your certificate out of its frame.

2. Your actions as set out in charge 1 were dishonest in that you sought to mislead Colleague A into believing you had completed the course when you knew you had not done so.

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

(a) That you had completed the course in 2016 when you knew you had not done so;

(b) That the training provider for the course was Professional Education in practice and that it lasted only 4 days when you knew the course was provided in house by the Trust and did not last only 4 days;

(c) That one of your duties/responsibilities being a teacher of advanced practice roles when you knew that you were not a teacher of advanced practice roles;

(d) That you were an Advanced Theatre Practitioner when you knew you were not.

4. Your actions as set out in charge 3 were dishonest in that you sought to mislead the Trust into believing you were a suitable candidate for the post of Surgical Emergency Nurse Practitioner when you knew you were not.

5. Between February 2015 and May 2017 failed to preserve safety by working outside of the scope of your practice in that you routinely carried out work of an Advanced Nurse Practitioner when you were not qualified in such a role.
And by reason of the above your fitness to practice is impaired by reason of your misconduct.
Details of charge (as amended):

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, ("The Trust"),

1. Led Colleague A into believing that you had passed the Advanced Scrub Practitioner Course ("the course") in that you,
   
   (a) In or around November 2015 told Colleague A you did not need to wear a white hat in theatre as you had passed the course; (the panel found this charge proved)
   
   (b) On 13 October 2016 sent an email to Colleague A following a request where you were asked for documentation to show you had completed the course, that you had recently moved house and would need time to get your certificate out of its frame. (the panel found this charge proved)
   
2. Your actions as set out in charge 1 were dishonest in that you sought to mislead Colleague A into believing you had completed the course when you knew you had not done so. (the panel found this charge proved)
   
3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,
   
   (a) That you had completed the course in 2016 when you knew you had not done so; (the panel found this charge proved)
   
   (b) That the training provider for the course was Professional Education in practice and that it lasted only 4 days when you knew the course was provided in house by the Trust and did not last only 4 days; (the panel found this charge not proved)
   
   (c) That one of your duties/responsibilities being a teacher of advanced practice roles when you knew that you were not a teacher of advanced practice roles; (the panel found this charge proved)
   
   (d) That you were an Advanced Theatre Practitioner when you knew you were not. (the panel found this charge proved)
   
4. Your actions as set out in charge 3 were dishonest in that you sought to mislead the Trust into believing you were a suitable candidate for the post of Surgical Emergency Nurse Practitioner when you knew you were not. (the panel found this charge proved)
5. Between February 2015 and May 2017 failed to preserve safety by working outside of the scope of your practice in that you routinely carried out work of an Advanced Nurse Practitioner when you were not qualified in such a role. (the panel found this charge proved)

And by reason of the above your fitness to practice is impaired by reason of your misconduct.
Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Smith was not in attendance and that written notice of this hearing had been sent to Mr Smith’s registered address by recorded delivery and by first class post on 15 February 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mr Smith's right to attend, be represented and call evidence, as well as the panel’s power to proceed in his absence.

Ms Paisley submitted that the Nursing and Midwifery Council (“NMC”) had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mr Smith has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34.
Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mr Smith.

The panel had regard to Rule 21 (2) of the Rules which states:

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

(a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

(b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or

(c) may adjourn the hearing and issue directions.

Ms Paisley, on behalf of the NMC, informed the panel that whilst the notice of this hearing that was sent to Mr Smith’s registered address had been returned to sender, the notice of hearing had also been sent to another address where the NMC had been informed that Mr Smith was living. In June 2018, Mr Smith sent an email to the NMC to notify it that he had moved address. Ms Paisley informed the panel that, despite numerous attempts by the NMC to request Mr Smith to formally update his registered address, this had not been done. A tracing agent had been instructed, and enquiries made indicated that Mr Smith was residing at the new address provided. Therefore, notice of this hearing was sent to Mr Smith’s registered address, and the new address provided. Royal Mail track and trace indicated that the notice of hearing was delivered to the latter address.

Ms Paisley informed the panel that the NMC had made numerous attempts to contact Mr Smith by post, email and telephone. She submitted that Mr Smith had not been
engaging, and he had not responded to attempts to contact him in relation to this hearing. Mr Smith had not requested an adjournment. Ms Paisley submitted that there was no evidence to suggest that an adjournment would secure Mr Smith’s attendance at a hearing on a future date.

Ms Paisley submitted that there was a public interest in this hearing taken place expeditiously. She submitted that the case involved serious allegations and that public confidence in the nursing profession would be undermined if this case did not proceed. Ms Paisley submitted that the NMC had done everything it could to inform Mr Smith of these proceedings. She submitted that it was clear Mr Smith was not engaging and that he had voluntarily absented himself from this hearing. In these circumstances, Ms Paisley invited the panel to proceed in the absence of Mr Smith.

The panel accepted the advice of the legal assessor.

The panel had regard to the information before it. The panel considered that Mr Smith had not engaged in relation to the allegations in this case. The only communication he had made with the NMC was in June 2018 in relation to a change of address. The panel noted that the NMC had made numerous attempts to contact Mr Smith in relation to today’s hearing, by post, email and telephone, which had been unsuccessful. Mr Smith did not appear to be engaging with these proceedings. The panel noted that Mr Smith had not requested an adjournment and did not consider that there was any evidence to suggest that an adjournment would secure his attendance at a hearing on a future date. The panel was of the view that Mr Smith had voluntarily absented himself from this hearing.

The panel had regard to the public interest in the expeditious disposal of these proceedings. It noted that two witnesses were due to attend this hearing to give evidence.

There is some disadvantage to Mr Smith’s in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to Mr Smith at his registered
address, he has made no response to the allegations. Mr Smith will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his own behalf. However, in the panel’s judgment, this can be mitigated. The panel can make allowance for the fact that the NMC’s evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Smith decision to absent himself from the hearing, waive his right to attend and/or be represented and to not provide evidence or make submissions on his own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mr Smith. The panel will draw no adverse inference from Mr Smith’s absence in its findings of fact.
Decision and reasons on application to amend the charge

The panel heard an application made by Ms Paisley, on behalf of the NMC, to amend the wording of charge 3 c).

The proposed amendment was to change “teaching” to “teacher”, to clarify a grammatical error.

Original charge:

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

(c) That one of your duties/responsibilities being a teaching of advanced practice roles when you knew that you were not a teacher of advanced practice roles;

Proposed amended charge:

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

(c) That one of your duties/responsibilities being a teaching teacher of advanced practice roles when you knew that you were not a teacher of advanced practice roles;

The panel accepted the advice of the legal assessor.

Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—
(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mr Smith and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.
Decision and reasons on further application to amend the charge

Following the charges being read, the panel heard a further application made by Ms Paisley, on behalf of the NMC, to amend the wording of charge 1. She submitted that following queries raised by the panel and the legal assessor, it was deemed acceptable to ask Colleague A what the correct name of the course was. Colleague A had responded that the name of the course was an Advanced Scrub Practitioner course. Therefore, the proposed amendment was to change ‘Advanced Nurse Prescriber Course’ to ‘Advanced Scrub Practitioner Course’.

Ms Paisley submitted that the proposed amendment did not materially change the case against Mr Smith, as throughout the documentary evidence, the course referred to was an Advanced Scrub Practitioner Course.

Original charge:

1. Led Colleague A into believing that you had passed the Advanced Nurse Prescriber Course (“the course”) in that you,

Proposed amended charge:

1. Led Colleague A into believing that you had passed the Advanced Nurse Prescriber Scrub Practitioner Course (“the course”) in that you,

The panel accepted the advice of the legal assessor.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mr Smith and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy and to reflect the evidence in this case.
Background

On 28 December 2017 the NMC received a referral from the Acting Director for Nursing and Midwifery at the Royal United Hospitals Bath NHS Foundation Trust (“the Trust”), where Mr Smith was employed as a Scrub Nurse.

Mr Smith was initially employed as a Band 5 Theatre Scrub Nurse. Following a successful application and interview with the Trust, he moved into a Band 6 training position, for which the completion of an Advanced Scrub Practitioner Course (“the Course”) was essential.

Mr Smith was removed from the Course on 12 November 2015, after unsuccessful attempts to contact him in relation to completing his assignments. It is alleged that Mr Smith did not tell a manager or a supervisor that he had not completed the Course, and that he led colleagues into believing he had completed the Course, including Colleague A, a Consultant General Surgeon, who was Mr Smith’s clinical supervisor.

Nurses who were in training would wear a white hat in theatre, whilst those who had completed training would wear a blue hat, so it was clear who was in charge in the case of an emergency. It is alleged that in or around November 2015 Mr Smith told Colleague A that he did not need to wear a white hat in theatre, as he had passed the Course.

Colleague A allowed Mr Smith to complete tasks which he was not qualified to complete, as she was unaware that he had not completed the Course. When Colleague A asked to see the certificate of completion for the Course, it is alleged that Mr Smith sent her an email on 13 October 2016 stating that he had recently moved house and would need time to get the certificate out of its frame.

Following Mr Smith failing to attend a number of meetings and not seeking Colleague A’s input or guidance as an educational supervisor in relation to the Course, Colleague
A contacted Professional Education in Practice ("PEP"), which was the training provider for the Course and she was informed that Mr Smith had not completed the Course.

It is alleged that Mr Smith was dishonest in that he sought to mislead Colleague A into believing he had completed the Course when he had not done so.

During a local investigation conducted by the Trust, Mr Smith admitted that he had not completed the Course, and that he had not told a manager or a supervisor about this.

It is alleged that on an application form for a Surgical Emergency Nurse Practitioner post Mr Smith stated that he completed the Course in 2016 when he had not done so. It is also alleged that Mr Smith provided incorrect information about the training provider and the length of the time for the Course. It is also alleged that on this application form, Mr Smith stated he was a teacher of advanced practice roles, and that he was an Advanced Theatre Practitioner, when this was not the case.

It is alleged that Mr Smith was dishonest in that he sought to mislead the Trust into believing he was a suitable candidate for the post of Surgical Emergency Nurse Practitioner when he knew he was not.

It is also alleged that between February 2015 and May 2017 Mr Smith failed to preserve safety by working outside of the scope of his practice by routinely carrying out the work of an Advanced Nurse Practitioner when he knew he was not qualified for such a role. Colleague A states that she regularly had to speak to Mr Smith due to alleged instances of him working beyond the scope of his role and competence, and that in September 2015, she had to clarify his scope of practice with him.
Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel heard oral evidence from two witnesses called on behalf of the NMC: Colleague A, a Consultant General Surgeon at the Trust and Mr 1, a then Senior Matron and Deputy Head of Nursing at the Trust. The panel heard submissions from Ms Paisley, on behalf of the NMC.

The panel accepted the advice of the legal assessor.

The panel is aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the panel is satisfied that it is more likely than not that the incidents occurred as alleged.

The panel first considered the overall credibility and reliability of both the witnesses it had heard from.

Colleague A

The panel considered that Colleague A was a credible and reliable witness, who was clear and concise in answering the panel’s questions. The panel considered that Colleague A gave direct and helpful evidence, which was corroborated by documentary evidence, and that she was clear where she was unable to recall specific matters or answer specific questions. The panel noted that Colleague A gave a candid and positive opinion of Mr Smith’s capabilities as a nurse, and was open and honest in relation to her own working relationship with him.
Mr 1

The panel noted that Mr 1 had not worked in a clinical capacity with Mr Smith and therefore was not a direct witness to any of the alleged incidents in this case. However, Mr 1 carried out the disciplinary investigation at the Trust, and provided a detailed Investigatory Report and written records of meetings that he had undertaken with Mr Smith. The panel considered that Mr 1 was credible and reliable and gave helpful information in relation to the investigation that he carried out, and the meetings and discussions he had with Mr Smith, which was supported by the documentary evidence before the panel. Whilst there were occasions where Mr 1 appeared to provide opinion evidence, the panel considered that Mr 1 was trying to assist the panel, and there was no suggestion of any animosity towards Mr Smith.

The panel considered each charge and made the following findings:

**Charge 1 a):**

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

1. Led Colleague A into believing that you had passed the Advanced Scrub Practitioner Course (“the course”) in that you,

   (a) In or around November 2015 told Colleague A you did not need to wear a white hat in theatre as you had passed the course;

**This charge is found proved.**

In reaching this decision, the panel took into account the evidence of Colleague A and an email from a PEP Courses Administrator to Mr Smith dated 12 November 2015.
The panel noted that in Colleague A’s witness statement dated 2 July 2018 she stated that Mr Smith was resistant to wearing a white hat in theatre, which was required for staff undertaking training roles to indicate who was in training. Colleague A stated that in November 2015 Mr Smith told her that he did not need to wear the white hat as he had completed his Advanced Scrub Practitioner qualification.

The panel noted that this was corroborated by Colleague A’s oral evidence, where she stated that Mr Smith regularly took issue with wearing a white hat in theatre, and that he had told her he did not need to wear one as he had completed the Course.

The panel had regard to an email sent to Mr Smith by a PEP Courses Administrator dated 12 November 2015, in which they confirmed that as a result of Mr Smith failing to get in contact with them on a number of occasions, they would be withdrawing Mr Smith from the Course.

The panel considered that Colleague A’s evidence was clear that she was told by Mr Smith in November 2015 that he did not need to wear a white hat in theatre as he had passed the Course. However, Mr Smith had also received an email, confirming that he was being withdrawn from the course. In these circumstances, the panel determined that it was more likely than not that Mr Smith led Colleague A into believing he had passed the Course.

Therefore, this charge is found proved.

**Charge 1 b):**

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

1. Led Colleague A into believing that you had passed the Advanced Scrub Practitioner Course (“the course”) in that you,
(b) On 13 October 2016 sent an email to Colleague A following a request where you were asked for documentation to show you had completed the course, that you had recently moved house and would need time to get your certificate out of its frame.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, an email from Mr Smith to Colleague A dated 13 October 2016 and an email from a PEP Courses Administrator to Mr Smith dated 12 November 2015.

The panel had regard to the email dated 13 October 2016, in which Mr Smith stated that he needed the chance to unpack and get his certificate out of its frame as he had recently moved. In Colleague A’s oral evidence she confirmed that Mr Smith sent this email in response to a request from her to provide the certificate of completion of the Course. Colleague A also confirmed that she had made numerous requests for Mr Smith to provide her with this certificate.

The panel considered that Colleague A’s evidence was clear, that upon requesting Mr Smith to provide her with the certificate for the completion of the Course, he stated that he needed time to get the certificate out of its frame. Mr Smith had received an email dated 12 November 2015, confirming that he had been withdrawn from the Course. In these circumstances, the panel determined that it was more likely than not that Mr Smith led Colleague A into believing that he had completed the Course.

Therefore, this charge is found proved.

Charge 2:
That you, a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, ("The Trust"),

2. Your actions as set out in charge 1 were dishonest in that you sought to mislead Colleague A into believing you had completed the course when you knew you had not done so.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, the email from a PEP Courses Administrator to Mr Smith dated 12 November 2015, the email sent by Mr Smith to Colleague A dated 13 October 2016 and the notes of an investigatory interview between Mr Smith and Mr 1 dated 9 June 2017.

In making its findings, the panel had regard to the legal test for dishonesty. The panel must first ascertain the actual state of the individual's knowledge or belief as to the facts. Once this has been established, the question of whether the conduct was honest or dishonest is to be determined by applying the standards of ordinary decent people.

The panel had regard to the evidence of Colleague A, reminding itself that Mr Smith had told her he did not need to wear a white hat in theatre as he had completed the Course, and that he had sent her an email on 13 October 2016, stating that he needed time to get a certificate out of its frame in his house, in response to her request to provide a certificate for the completion of the Course. The panel noted the email sent to Mr Smith on 12 November 2015, some eleven months previously, confirming that he had been withdrawn from the Course, due to the lack of completion of paperwork to gain an extension and missed submission deadlines.

The panel had regard to the notes of an investigatory interview held on 9 June 2017, in which it was recorded that Mr 1 asked Mr Smith as to why he had told Colleague A he needed some time to get the certificate out of its frame. It was recorded that Mr Smith
responded stating “I was just trying to buy some time really…I was trying to think of the way I’d tell her to be honest…”

The panel considered that it was clear that Mr Smith had been withdrawn from the Course in November 2015, and based on the email sent to him, it would have been clear that he had not passed the Course. However, Mr Smith went on to state that he had passed the Course to Colleague A, and that he needed time to get the certificate for the completion of the Course out of its frame. The panel also had regard to Mr Smith’s responses during the investigatory interview, where he stated that he was trying to buy some time. He also noted in his interview with Mr 1 that he was concerned he may lose his job if he admitted he had not passed the Course.

On the basis of this evidence, the panel considered that it was more likely than not that Mr Smith was trying to mislead Colleague A into believing he had completed the Course, when he knew he had not done so. Mr Smith had clear and explicit confirmation that he had been withdrawn from the Course, yet over a prolonged period of time, he allowed Colleague A to believe that he had passed the Course, including in an email sent to her almost a year after the confirmation he had received from the training provider that he had been withdrawn from the Course. The panel had regard to the notes of the investigatory interview, where it appeared that Mr Smith only admitted that he had not passed the Course when he was challenged over it. The panel considered that such actions would be regarded as dishonest according to the standards of ordinary decent people.

Therefore, this charge is found proved.

**Charge 3 a):**
That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

(a) That you had completed the course in 2016 when you knew you had not done so;

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Mr 1, the application form for the post of Surgical Emergency Nurse Practitioner and the email sent from a PEP Courses Administrator to Mr Smith dated 12 November 2015.

The panel had regard to the application form which Mr Smith submitted to the Trust for the post of Surgical Emergency Nurse Practitioner. In that form, under a list of education and professional qualifications and relevant training courses attended, Mr Smith stated that he had completed “Advanced Scrub Practitioner 1 + 2” in 2016.

The panel had regard to the evidence of Mr 1 who said that on applications of this type, to list a training course as being completed, you would have been expected to have attended and completed the academic requirements to have passed the course.

The panel had regard to the fact that Mr Smith had not completed the Course, as he had been withdrawn from it by the training provider in November 2015.

On the basis of this evidence, the panel determined that it was more likely than not that Mr Smith completed an application form for the post of Surgical Emergency Nurse Practitioner in which he stated that had completed the Course in 2016 when he knew he had not done so.
Therefore, this charge is found proved.

**Charge 3 b):**

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

   (b) That the training provider for the course was Professional Education in practice and that it lasted only 4 days when you knew the course was provided in house by the Trust and did not last only 4 days;

**This charge is found not proved.**

In reaching this decision, the panel took into account the evidence of Mr 1, the Trust’s Investigatory Report dated July 2017 and the application form for the post of Surgical Emergency Nurse Practitioner.

The panel noted that in Mr 1’s witness statement dated 20 August 2018 it was stated that Mr Smith, on the application form for the post of Surgical Emergency Nurse Practitioner, did not state that the Course was an in house course, but alluded to it being a professional course and stated that it lasted for four days.

The panel had regard to the application form which Mr Smith submitted for the post of Surgical Emergency Nurse Practitioner. In that form, under relevant training courses, the training provider for the completion of the Course was recorded as “Professional Education in practice” as well as the duration of the Course being “4 days”.

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The panel had no oral or documentary evidence before it to suggest that the Course was not run by Professional Education in Practice, and that it did not last for four days. There was no information to support Mr 1’s assertion in his written witness statement that the Course was run in house by the Trust, and that it did not last for four days.

In these circumstances, and panel determined that the NMC had not discharged its burden of proof.

Therefore, this charge is found not proved.

**Charge 3 c):**

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

   (c) That one of your duties/responsibilities being a teacher of advanced practice roles when you knew that you were not a teacher of advanced practice roles;

**This charge is found proved.**

In reaching this decision, the panel took into account the application form for the post of Surgical Emergency Nurse Practitioner and the evidence of Mr 1.

The panel had regard to the application form which Mr Smith submitted for the post of Surgical Emergency Nurse Practitioner, in which it was recorded, under a description of duties and responsibilities: “education of medical students, junior doctors and theatre nurses including teaching of advanced practice roles”. Under the section for supporting
information, it was recorded: “I actively participate in teaching clinical skills to both nursing and junior medical staff…”

The panel had regard to the written witness statement of Mr 1 in which he stated Mr Smith “was a trainee” and the information provided was felt to be misleading, as he had made out “that he had done the course and was teaching advanced roles”.

The panel considered that having not completed the Course, Mr Smith would not have had the required skills and qualifications in order to teach advanced practice roles. Only by completing the Course would Mr Smith have had the combination of signed off competencies, skills and qualifications in order to go on to teach such skills and competencies to other members of staff.

On the basis of this evidence, the panel determined that it was more likely than not that on the application form for the post of Surgical Emergency Nurse Practitioner, Mr Smith stated that he was a teacher of advanced practice roles when he knew he was not.

Therefore, this charge is found proved.

**Charge 3 d):**

That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

3. Completed an application form for the post of Surgical Emergency Nurse Practitioner in which you stated as follows,

    (d) That you were an Advanced Theatre Practitioner when you knew you were not.

**This charge is found proved.**
In reaching this decision, the panel took into account the application form for the post of Surgical Emergency Nurse Practitioner and the evidence of Colleague A.

The panel had regard to the application form which Mr Smith submitted to the Trust for the post of Surgical Emergency Nurse Practitioner. In that form, under the section for supporting information, it was recorded that Mr Smith was an “Advanced Theatre Practitioner” and that “I have competencies in areas of extended practice such as primary wound closure with a range of techniques and use of local anaesthesia”.

The panel had regard to the evidence of Colleague A, who had stated that upon believing Mr Smith had completed the Course, she allowed him to complete certain tasks independently such as wound closure, however she would not have signed him off in such competencies had she known that he had not completed the Course.

The panel considered the information provided on the form. It considered that Mr Smith appeared to be demonstrating that he was performing an advanced nursing role, and had advanced skills and competencies within such a role, when he knew this not to be the case, as he had not completed the Course, and therefore did not have the required level of skills and qualifications for the role of an Advanced Theatre Practitioner. Despite completing certain competencies under the authorisation of Colleague A, Mr Smith himself would have known that he had not completed the Course, and therefore did not have the required level of theoretical knowledge to enable him to say that he had the skills listed of such an Advanced Theatre Practitioner.

On the basis of this evidence, the panel determined that it was more likely than not that on the application form for the post of Surgical Emergency Nurse Practitioner Mr Smith stated that he was an Advanced Nurse Practitioner when he knew he was not.

Therefore, this charge is found proved.

**Charge 4:**
That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

4. Your actions as set out in charge 3 were dishonest in that you sought to mislead the Trust into believing you were a suitable candidate for the post of Surgical Emergency Nurse Practitioner when you knew you were not.

**This charge is found proved.**

In reaching this decision, the panel took into account the application form for the post of Surgical Emergency Nurse Practitioner and the notes of an investigatory interview between Mr Smith and Mr 1 dated 9 June 2017.

In making its findings, the panel again had regard to the legal test for dishonesty.

The panel had regard to the application form for the post of Surgical Emergency Nurse Practitioner, in which it considered Mr Smith had provided a number of pieces of information which were incorrect. This included completing the Course in 2016 when he knew he had not done so, listing himself as being a teacher of advanced practice roles when he knew this was not the case and listing himself as an Advanced Theatre Practitioner when he knew this was not the case.

The panel had regard to the notes of the investigatory interview on 9 June 2017, in which it was recorded that Mr Smith appeared to accept that putting the Course down as a completed course could be misleading. In relation to stating that his role involved education of medical students, junior doctors and nursing and teaching advanced practice roles, Mr Smith accepted that he did not have the qualifications for these tasks. It was recorded that Mr Smith went on to say that he had not done anything that he was not signed off as competent to do by Colleague A, and he had never performed any clinical skills which he had not been trained to do and been assessed as competent for. However, Mr Smith accepted that he did not submit the assignments for the Course,
and therefore had not completed the academic component of such competencies. When asked by Mr 1 whether clinical elements went hand in hand with theory, Mr Smith responded “yes”.

In the notes of the investigatory interview, it was recorded that Mr Smith went on to state that he did not intend to be fraudulent, but it was “bad timing and bad construction of a job application…”

The panel considered that upon reading the application form as a whole, the reader could reasonably assume a level of skills, qualifications and experience which Mr Smith did not in fact possess. The panel had regard to the responses provided by Mr Smith during the investigatory interview at the Trust. The panel considered that whilst Mr Smith may have been trained and competent to perform certain tasks, he knew he had not passed the Course, which would have given him the theoretical and academic knowledge that underpinned those tasks and ensured patient safety. In relation to the statements of having completed the Course in 2016, and the fact of his role involving teaching advanced practice roles, Mr Smith accepted that this was not the case.

In these circumstances, the panel could not place weight on Mr Smith’s explanation that this was a poorly constructed job application. The panel did not consider that this was a case of filling in information negligently or carelessly. The panel was of the view that it was more likely than not that Mr Smith intended to mislead the Trust into believing he was a suitable candidate for the post of Surgical Emergency Nurse Practitioner, when he knew that he was not. The panel considered that such actions would be regarded as dishonest according to the standards of ordinary decent people.

Therefore, this charge is found proved.

Charge 5:
That you a Registered Nurse whilst employed by the Royal United Hospitals Bath, NHS Foundation Trust, (“The Trust”),

5. Between February 2015 and May 2017 failed to preserve safety by working outside of the scope of your practice in that you routinely carried out work of an Advanced Nurse Practitioner when you were not qualified in such a role.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Colleague A, email correspondence between Mr Smith and Colleague A, notes of a meeting between Mr Smith and Colleague A dated 3 September 2015 and the notes of an investigatory interview between Mr Smith and Mr 1 dated 9 June 2017.

The panel considered that it was clear that, as a registered nurse, Mr Smith had the duty to preserve the safety of patients by working within his scope of practice and competence, both clinically and academically. The panel considered that the duty to preserve safety by working within the scope of one’s practice formed a fundamental tenet of the nursing profession as well as being an essential part of the NMC’s Code of Conduct.

The panel noted that the role of an Advanced Nurse Practitioner had not been defined in the oral and documentary evidence before it. However, having regard to the evidence and circumstances of this case, the panel considered what was key was assessing whether Mr Smith appeared to be working at an advanced level, beyond the skills of a nurse working in a non-advanced role.

The panel had regard to the evidence of Colleague A. She had stated that there were a number of occasions where she found Mr Smith had been working outside the scope of his practice. Colleague A gave specific examples of such instances to the panel, which included joining consultant ward rounds and making records in patients’ notes, dealing
with emergency admissions of patients and suggesting diagnoses to consultants, reviewing patients’ blood test results and upon assumption by fellow nurses that Mr Smith was a doctor, not clarifying that he was a nurse.

The panel noted that it was the evidence of Colleague A that as a result of such instances, she met with Mr Smith to clarify his scope of practice. The panel had regard to the notes of a meeting between Mr Smith and Colleague A dated 3 September 2015, in which Colleague A had recorded what fell within the scope of Mr Smith’s practice and what did not. Colleague A told the panel that once she had written these notes up from the meeting, she emailed them to Mr Smith shortly after.

It was Colleague A’s evidence that despite providing this document to Mr Smith to clarify the scope of his practice, there remained instances subsequently where he continued to work beyond the scope of his practice. The panel had before it email correspondence between Colleague A and Mr Smith dated between November 2015 and February 2016, in which Colleague A again clarified the scope of Mr Smith’s practice. Colleague A also told the panel that she spoke to other consultants to clarify the scope of Mr Smith’s practice, due to concern about patients being put at risk of harm, and Mr Smith’s assertion that consultants were asking him to perform certain tasks that he was not qualified to perform. Colleague A was clear in her evidence that there was a risk to patients when any practitioner works beyond the scope of what they are qualified to do.

On the basis of this evidence, the panel considered that it was clear that Mr Smith had been working beyond the scope of his practice. Colleague A had clarified to Mr Smith that his remit should be restricted to patients requiring surgery in theatre only or those immediately post-op. Despite his scope of practice being clarified on a number of occasions by Colleague A, Mr Smith continued to perform tasks that went beyond his remit, including providing care to patients where a decision for theatre had not been made.
The panel also had regard to Colleague A’s evidence that she allowed Mr Smith to perform certain clinical tasks within the remit of his role unsupervised, such as wound closure and performing post-operative checks, on the basis that she had observed him as being technically competent to perform those tasks and she believed he had completed the Course. However, she stated had she known he had not completed the theoretical components of the Course, she would never have allowed him to perform such tasks unsupervised. The panel also had regard to the notes of the investigatory meeting between Mr Smith and Mr 1 dated 9 June 2017 as well as the oral evidence of Mr 1, in which it was stressed that the importance of having the academic knowledge to complete a task was just as important as having received clinical training and being signed off as clinically competent.

The panel considered the fact that Mr Smith was performing certain clinical competencies within his role unsupervised, when he had not completed the Course, meant that he did not possess the required qualification and academic competent to perform such competencies. In this respect, the panel considered that it was clear that Mr Smith had been working beyond his scope of practice.

In these circumstances, the panel considered that there was evidence of instances where Mr Smith was working beyond the scope of his practice. This was in relation to performing tasks which went beyond his core nursing remit, and beyond the scope of practice which had clearly been defined by Colleague A and clarified to Mr Smith on a number of occasions. Furthermore, Mr Smith also appeared to be performing the clinical tasks of an advanced practitioner, which whilst fell within the remit of his training role, he had not demonstrated the theoretical knowledge to perform independently as he had not completed the Course. He had only been permitted to do so as Colleague A was misled to believe he had completed the Course.

On the basis of this evidence, the panel determined that it was more likely than not that between February 2015 and May 2017 Mr Smith failed to preserve safety by working
outside the scope of his practice, by routinely carrying out the work of an Advanced Nurse Practitioner when he knew he was not qualified in such a role.

Therefore, this charge is found proved.
Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mr Smith’s 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.

Ms Paisley, on behalf of the NMC, provided the panel with written submissions in relation to misconduct and impairment. She referred the panel to the cases of *Calhaem v GMC* [2007] EWHC 2006 (Admin), *Nandi v GMC* [2004] EWHC 2317 (Admin) and *Roylance v GMC (No. 2)* [2000] 1 AC 311 and the principles contained within those cases. In the case of *Roylance* misconduct is defined as a “word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances”.

Ms Paisley invited the panel to take the view that Mr Smith’s actions amount to a breach of *The Code: Professional standards of practice and behaviour for nurses and midwives* (2015) (“the 2015 Code”). She then directed the panel to specific paragraphs and standards and identified where, in the NMC’s view, Mr Smith’s actions amounted to a breach of those standards.

Ms Paisley submitted that the facts found proved in this case amounted to misconduct. She submitted that undertaking work for which one is not qualified and applying for a post detailing misleading qualifications and therefore not having the requisite training and qualifications to undertake that post are serious failings. Ms Paisley submitted that colleagues expect to rely on their own colleagues to be open, honest and act with integrity. Colleagues as well as members of the public would expect nurses to be properly trained and qualified for the work they undertake. Ms Paisley submitted that Mr
Smith’s lies were unacceptable, were not one-off events and they “spiralled actively out of control”.

Ms Paisley 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. Ms Paisley referred the panel to the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). She submitted that all four limbs of Dame Janet Smith’s test as set out in her Fourth Report from Shipman were engaged in this case.

Ms Paisley referred the panel to the case of Cohen v GMC [2008] EWHC 581 (Admin) and the test to be applied when considering whether Mr Smith was liable to place patients at risk of harm, to bring the profession into disrepute, to breach fundamental tenets of the profession and to act dishonestly in the future. She submitted that Mr Smith had not engaged throughout the NMC’s proceedings, and had therefore provided no further material for the panel to consider. Ms Paisley submitted that there has been no evidence of insight, reflection, remorse or of competent practice. There was no evidence of remediation and therefore nothing to suggest this behaviour would not be repeated. She further submitted that the dishonesty demonstrated a deep-seated and attitudinal problem on Mr Smith’s part, which is not capable of remediation.

Ms Paisley submitted that public faith in the nursing profession would be undermined if this sort of behaviour was allowed to continue. She invited the panel to find that Mr Smith’s fitness to practise is currently impaired on public protection and public interest grounds.

The panel accepted the advice of the legal assessor which included reference to the cases of: Roylance v General Medical Council (No 2) [2000] 1 A.C. 311, Council for
Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) and Nicholas-Pillai v GMC [2015] EWHC 305 (Admin).

The panel adopted a two-stage process in its consideration. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mr Smith’s fitness to practise is currently impaired as a result of that misconduct.
Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of The Code: Standards of conduct, performance and ethics for nurses and midwives 2008 (“the 2008 Code”) and the 2015 Code.

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

The panel was of the view that Mr Smith’s actions fell significantly short of the standards expected of a registered nurse, and that his actions amounted to a breach of the 2008 Code and the 2015 Code. The panel considered that the following sections of the codes were engaged in this case:

The 2008 Code:

“38 You must have the knowledge and skills for safe and effective practice when working without direct supervision.

39 You must recognise and work within the limits of your competence.

... 

61 You must uphold the reputation of your profession at all times.”

The 2015 Code:

“6 Always practise in line with the best available evidence

...
6.2 maintain the knowledge and skills you need for safe and effective practice

...

8 Work cooperatively

...

8.2 maintain effective communication with colleagues

...

8.5 work with colleagues to evaluate the quality of your work and that of the team

8.6 share information to identify and reduce risk

...

13 Recognise and work within the limits of your competence

...

13.5 complete the necessary training before carrying out a new role

...

16 Act without delay if you believe that there is a risk to patient safety or public protection

...
16.2 raise your concerns immediately if you are being asked to practise beyond your role, experience and training

...

20 Uphold the reputation of your profession at all times

...

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

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.

The panel had regard to the specific facts of this case. Mr Smith clearly knew he had not passed the Course, as he had received an email from the training provider informing him that he had been withdrawn. Despite having this knowledge, Mr Smith continued to work for at least a year beyond the boundaries of what he was qualified to do, performing tasks where he knew he did not have the required theoretical knowledge. Mr Smith behaved dishonestly, by misleading Colleague A into believing that he had passed the Course. Furthermore, Mr Smith providing misleading information in his application for the post of Surgical Emergency Nurse Practitioner, representing himself as having skills and qualifications for the post which he knew he did not have. Mr Smith’s actions represented a sustained level of dishonesty over a significant period of time, and he only admitted to this dishonesty when he was challenged during the disciplinary investigation carried out by the Trust. Mr Smith also worked beyond the scope of his practice on several occasions over a long period of time, despite being
given clear written guidance and oral clarification by Colleague A on a number of occasions as to what he could and could not do within the remit of his role.

The panel was of the view that Mr Smith’s actions, both individually and collectively, were so serious and fell far below the standards expected of a registered nurse. The panel considered that this behaviour would be viewed as deplorable by members of the public and fellow members of the nursing profession. The panel therefore determined that Mr Smith’s actions amounted to serious misconduct.
Decision on impairment

The panel next went on to decide if as a result of this misconduct Mr Smith’s fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. 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 considered that all limbs of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged in this case. Mr Smith put patients at risk of harm, by representing to Colleague A and the Trust that he had passed the Course, and therefore that he had the theoretical knowledge to be performing certain tasks, when he knew he did not have such knowledge. Mr Smith worked beyond his scope of practice, performing tasks which went beyond the remit of his immediate position, despite receiving clarification from Colleague A on a number of occasions as to what was and was not within his scope of practice. Having regard to the evidence before it, the panel considered that Mr Smith's actions in acting beyond the scope of his practice as a nurse may have been driven by a long held desire to be a doctor. In this regard the panel noted the evidence of Colleague A, who had informed the panel that on a number of
occasions there were instances of Mr Smith performing actions well beyond the scope of his practice, which was should have been limited to working with patients identified for theatre and not correcting assumptions made by nurses that he was a doctor.

The panel considered that Mr Smith’s actions put patients at risk of harm. Furthermore, Mr Smith acted dishonestly and misled Colleague A into believing that he had passed the Course, and he mislead the Trust into believing that he had certain skills and qualifications which he did not have, upon submitting an application form for the post of Surgical Emergency Nurse Practitioner. The panel considered that Mr Smith’s sustained period of dishonesty represented an attitudinal problem on his part. The panel further considered that Mr Smith’s dishonesty brought the profession into disrepute and breached fundamental tenets of the profession.

The panel went on to consider whether, in the future, Mr Smith was liable to place patients at risk of harm, bring the profession into disrepute, breach fundamental tenets of the profession and act dishonestly. In doing so, the panel considered whether there was any evidence of insight, remorse and remediation on Mr Smith’s part.

The panel noted that it had limited information from Mr Smith as he had not engaged with the NMC’s proceedings, and had therefore provided no additional material for the panel to consider. The only material it had to consider was the responses from Mr Smith provided during the investigatory interviews at the Trust. The panel considered that during these interviews, Mr Smith did demonstrate some acceptance of his wrongdoing. However, it also had regard to the fact that Mr Smith appeared only to admit to his misleading and dishonest behaviour when he was challenged. The panel had regard to the following response given by Mr Smith during the investigatory interview with Mr 1 on 9 June 2017:

“…on hindsight, I know I screwed this one up. I’m not trying to say what I did was right. I’m saying I had my reasons for it. I understand the implications for it and it’s been – I’m not an idiot, this has been playing on my conscience for an
extended period of time. This is not me trying to say what I did was right. This is me trying to say that I had got myself into a situation that I didn’t know how to deal with and I didn’t deal with it appropriately. I am conscious about that. I think that’s an important thing to put across, that this is not me trying to justify what I did as being correct. It’s just me trying to explain how it happened."

Whilst the panel considered that Mr Smith demonstrated some acceptance of his wrongdoing, it considered that this, as well as further responses provided during the investigatory interviews, did not demonstrate any level of reflection, insight or remorse. Mr Smith also showed no understanding of the implications of his actions and behaviour on patients, colleagues, members of the public and the reputation of the profession. The panel further noted that during the investigatory interview, Mr Smith appeared to qualify some of his actions by asserting that he had never performed tasks that he was not trained to do or that Colleague A had not observed him performing. Mr Smith did not appear to appreciate the importance of being properly qualified in performing clinical tasks in order to preserve safety, and the fact that the tasks which Colleague A allowed him to perform independently were done because of his misleading Colleague A into believing that that he had passed the Course.

Having regard to the fact that no further information had been provided by Mr Smith, the panel considered that there was a lack of real evidence of insight, remorse and of remedial actions taken to demonstrate that he was unlikely to repeat his behaviour again. The panel considered that a risk of repetition remained, and determined that Mr Smith remained liable to place patients at risk of harm, to bring the profession into disrepute, to breach fundamental tenets of the profession and to behave dishonestly in the future. The panel therefore determined that a finding of impairment was necessary on public protection grounds.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining
public confidence in the nursing profession and upholding the proper professional standards for members of the profession. The panel considered that Mr Smith’s behaviour in this case, which involved sustained dishonestly in relation to the skills and qualifications that he had, as well as working beyond the scope of his practice over a long period of time, fell far below what members of the public would expect from registered nurses responsible for providing safe and effective care to patients. The panel determined that a finding of impairment was also necessary on public interest grounds, in order to maintain public confidence in the nursing profession and in the NMC as a regulator, and to declare and uphold proper standards of conduct and performance.

Having regard to all of the above, the panel was satisfied that Mr Smith’s fitness to practise is currently impaired.
**Determination on sanction:**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mr Smith off the register. The effect of this order is that the NMC register will show that Mr Smith has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence in this case. The panel was provided with written submissions from Ms Paisley, on behalf of the NMC. The panel accepted the advice of the legal assessor, which included reference to the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin). The panel bore 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.

Ms Paisley, on behalf of the NMC, outlined the sanction bid for a striking-off order. She outlined aggravating factors for the panel to consider, as well as mitigation put forward by Mr Smith during the Trust’s disciplinary investigation. She submitted that this case was too serious for the panel to take no further action or to impose a caution order. Ms Paisley submitted that conditions of practice would not be appropriate as there were no workable conditions, and given the seriousness of the misconduct. She submitted that a suspension order was not appropriate, given the risk of Mr Smith repeating his behaviour and the evidence of attitudinal problems on his part. Ms Paisley submitted that as Mr Smith has not engaged with these proceedings there was no evidence of insight, remorse, reflection or safe effective practice since the misconduct occurred. She submitted that the only appropriate sanction was that of a striking-off order.

In relation to the dishonesty in this case, Ms Paisley referred the panel to the cases of *Parkinson v NMC* [2010] EWHC 1898 (Admin) and *Atkinson v GMC* [2009] EWHC 3636 (Admin) and the principles contained in those cases. She submitted that the dishonesty involved deliberately breaching the professional duty of candour as well as
premeditated, systematic and longstanding deception. Ms Paisley submitted that Mr Smith repeatedly misled and lied in respect of a qualification that he did not have, over an elongated period of time. She submitted that Mr Smith practised outside the scope of his qualifications, putting patients at risk of harm, and then tried to apply for a more senior nursing role on the basis of completing such a qualification. Ms Paisley submitted that Mr Smith intended to continue acting dishonestly, only revealing the truth when he was “caught out”. She concluded by submitting that the dishonesty in this case was of the utmost seriousness and was fundamentally incompatible with remaining on the NMC’s register.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

**Aggravating factors:**
- Mr Smith has demonstrated a lack of insight and remorse;
- Patients were put at real risk of harm by Mr Smith working beyond the scope of his practice over a long period of time, albeit no actual harm materialised;
- Mr Smith’s actions involved sustained dishonesty over a long period of time;
- Mr Smith only admitted to having not completed the Course when challenged during the Trust’s disciplinary investigation.

**Mitigating factors:**
- In all other respects, the panel had evidence before it that Mr Smith was a skilled and able practitioner.

The panel was of the view that the dishonesty in this case fell at the higher end of the spectrum of seriousness. In this regard, the panel noted that Mr Smith worked beyond the scope of his practice despite knowing that he had not completed the Course, and therefore did not have the required qualifications to undertake certain tasks. This occurred over a long period of time, despite having opportunity to tell the truth, and the dishonesty was compounded by the fact that Mr Smith then went on to apply for an
advanced nursing role, providing information stating that he had skills and qualifications which he did not have. In this respect, the panel considered that Mr Smith’s dishonesty was premeditated and long standing. This involved a direct risk to patients, as Mr Smith was working beyond the scope of his practice over a long period of time. A nurse working at an advanced level must be both technically skilled and have the relevant formal qualifications and theoretical knowledge to make clinically safe decisions. Mr Smith knowingly worked without theoretical knowledge for his practice.

The panel then went onto consider what action, if any, to take in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of this case, the dishonesty and the risk of repetition identified. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

The panel next considered 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 Fitness to Practise Committee wishes to mark that the behaviour was unacceptable and must not happen again.”

The panel considered that Mr Smith’s misconduct was not at the lower end of the spectrum. The panel considered that a caution order would be inappropriate in view of the seriousness of the case, the risk of repetition identified and given the fact that Mr Smith had not provided the panel with any information to demonstrate remorse and insight, to satisfy the panel that this behaviour would not be repeated. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.
The panel next considered whether to impose a conditions of practice order. The panel did not consider that this was a case where it was possible to formulate practicable and workable conditions, given the attitudinal concerns in respect of Mr Smith and his prolonged dishonesty. Furthermore, given Mr Smith’s lack of engagement with these proceedings, the panel had no evidence to suggest that he would be willing to comply with conditions of practice. The panel determined that conditions of practice could not be formulated which would protect the public and satisfy the public interest.

The panel then went on to consider whether to impose a suspension order. The panel had regard to the SG, and the factors to consider when deciding whether this would be an appropriate sanction. The panel was of the view that Mr Smith’s failings did not involve a single instance of misconduct and there was evidence of attitudinal problems on Mr Smith’s part. Furthermore, the panel was not satisfied that Mr Smith had insight, and therefore the panel considered that he did pose a significant risk of repeating his behaviour. Having regard to Mr Smith’s complete lack of engagement with these proceedings, and therefore the fact that no material had been provided to demonstrate any reflection, remorse and insight, the panel did not consider that a period of suspension would serve any useful purpose. Whilst a period of suspension may be sufficient to protect the public, the panel did not consider that it would be sufficient to maintain public confidence in the nursing profession and in the NMC as a regulator and to uphold proper professional standards of conduct and performance.

The panel determined that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel then considered whether to impose a striking-off order. Having particular regard to Mr Smith’s premeditated and long standing dishonesty, the panel considered the case of Parkinson in which Mr Justice Mitting said:

“A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted
dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure.”

The panel also had regard to the case of Atkinson in which Mr Justice Blake stated:

“...erasure is not necessarily inevitable and necessary in every case where dishonest conduct by a medical practitioner has been substantiated. There are cases where the panel, or indeed this court on appeal, have concluded in the light of the particular element that a lesser sanction may suffice.... bearing in mind the important balance of the interest of the profession and the interest of the individual. It is likely that for such a course to be taken, a panel would normally require compelling evidence of insight and a number of other factors upon which it could rely that the dishonesty in question appeared to be out of character or somewhat isolated in its duration or range, and accordingly there was the prospect of the individual returning to practice without the reputation of the profession being disproportionately damaged for those reasons.”

The panel had regard to Mr Smith’s lack of engagement with these proceedings and the lack of information and material provided for it to consider. The panel did not have any evidence of insight, remorse or reflection in relation to his sustained dishonesty, a realisation of how his actions were unacceptable and an understanding by Mr Smith of the implications of his actions, such that it could be satisfied that the behaviour would not be repeated. Nor had Mr Smith engaged with the panel to demonstrate any such reflections or to persuade it to adopt a more lenient outcome.

The panel considered that Mr Smith’s actions represented a significant departure from the standards expected of a registered nurse and were fundamentally incompatible with him remaining on the register. The panel was of the view that Mr Smith’s actions were
so serious that to allow him to continue practising would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mr Smith’s actions in bringing the nursing profession into disrepute by adversely affecting the public’s view of how a registered nurse should conduct himself the panel has concluded that nothing short of this sanction would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.
Determination on Interim Order

Under Article 31 of the Nursing and Midwifery Order 2001 ("the Order"), the panel considered whether an interim order should be imposed in this case. A panel may only make an interim order if it is satisfied that it is necessary for the protection of the public, and/or is otherwise in the public interest, and/or is in the registrant’s own interests.

The panel considered the submissions made by Ms Paisley, on behalf of the NMC, that an interim suspension order for a period of 18 months should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.