

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

**Substantive Hearing  
1 – 2 December 2020**

2 Stratford Place, Montfichet Road, London, E20 1EJ

**Name of registrant:** Kathryn Adeyemi

**NMC PIN:** 15F1737E

**Part(s) of the register:** RNA: Registered Nurse – (sub part 1)  
Adult – Level 1  
21 September 2015

**Area of registered address:** Manchester

**Type of case:** Misconduct

**Panel members:** Clive Chalk (Chair, Lay member)  
Anne Grauberg (Registrant member)  
Jill Wells (Lay member)

**Legal Assessor:** Cyrus Katrak

**Panel Secretary:** Roshani Wanigasinghe

**Nursing and Midwifery Council:** Represented by Ruth Alabaster, Case Presenter

**Mrs Adeyemi:** Present and represented by Simon Walters  
instructed by the Royal College of Nursing (RCN)

**Facts proved by admission:** All

**Fitness to practise:** Impaired

**Sanction:** Caution Order (5 years)

**Interim order:** N/A

## **Details of charge**

That you, whilst employed as a Band 5 staff nurse on Ward C4, Royal Bolton Hospital:

1) On one or more of the dates set out below did not undertake required clinical observations in respect of an unknown number of patients in your care:

a) 23 April 2018;

b) 24 April 2018;

c) 25 April 2018; and/or

d) 03 May 2018.

**[Proved by admission in its entirety]**

2) On one or more of the occasions set out in Charge 1 above you recorded in patient medical records that you had taken the required clinical observations when you had not.

**[Proved by admission]**

3) Your conduct at Charge 2 above was dishonest as you created one or more patient medical records which contained clinical observations which you knew were false.

**[Proved by admission]**

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

## **Background**

The NMC received a referral made by Bolton NHS Foundation Trust (“the Trust”) regarding your practice. You were employed by the Trust as a band 5 staff nurse on ward C4 (Elderly Medicine/Endocrinology) at the Royal Bolton Hospital from 2015 until your dismissal on 3 August 2018.

The referral states that concerns were raised by Colleague A, a band 6 sister on ward C4, regarding your practice relating to patient observations. Their concerns were that you had not been seen physically carrying out patient observations.

It is alleged that you had provided verbal assurances to colleagues that patients were clinically stable and that observations had been carried out. During night shifts on 23, 24 and 25 April and 3 and 4 May 2018 Colleague A and Colleague C, another band 6 sister, observed you in practice and had provided statements which indicated that you had documented patient observations on NEWS charts which you had not been seen carrying out. It is alleged that one patient verbally confirmed that the observations documented had not been carried out by you.

At an investigating interview on 30 May 2018 you stated that you were feeling hassled and that Colleague C was undermining you in front of staff. At this interview you confirmed that you falsified patients' records and that you had done this for a couple of weeks.

### **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Mr Walters, who informed the panel on your behalf that you made full admissions to charges 1-3.

The panel therefore finds charges 1-3 proved in their entirety, by way of your admissions.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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, your fitness to practise is currently impaired as a result of that misconduct.

### **Submissions and evidence on misconduct and impairment**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a ‘*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*’

You elected to provide oral evidence to the panel. You said that you accept that on the shifts as per the charges, there were observations that were not undertaken yet recorded. You told the panel of the circumstances on the ward at the time these incidents occurred. You said that the ward had staffing issues which proved difficult, especially when lots of medication were to be administered such as intravenous medication and Neso Gastric (NG) feeding. You said that the Health Care Assistants would often refuse to assist with observations and that they had their reasons for doing so. You said that the previous manager had left her post and therefore the ward was in-between managers. It was your evidence that the new managers were getting to know their roles. You said that the managers did not look at the workload of the ward but the numbers of staff on duty. You said that you complained a lot about the staffing issues and on one occasion you were told by a manager to “suck it up and get on with it.” You told the panel that you felt as though you could not approach them. However, you did fill a number of Datix forms that refer to staffing concerns, but the complaints were not addressed. You said that it got to the point

that it was frustrating as nobody listened to you. You said that Datix forms are time consuming and that you felt you would not have the time to lodge them.

You said that you did not want to place blame on others or excuse your actions, but that one of the senior colleagues would often humiliate you in front of others during morning handover, highlighting what you had not done during the shift. You said that this behaviour made you stressed. You said that you avoided being “seen as a trouble maker and did not want to rock the boat.” You said that you were asked to do four hourly observations on all patients, which in your view was not always necessary. You said that this particular senior colleague only asked you, not other staff to do these observations so frequently and that this was a common occurrence. You informed the panel that in the end due to your frustration you wanted to “get her off your back” and recorded on patient charts to appear as though the observations had been done. You said that “you regret and feel awful” and take personal responsibility for your actions and you were sorry for your past conduct.

You verified when questioned by the panel that you undertook the observations that were required by the Trusts’ policy and when you considered them necessary. You confirmed the observations that you neglected to do were the four hours observations on all of the patients that your senior colleague instructed you to undertake. You fully accepted that to record that you had taken observations when you had not was more serious than not undertaking or recording at all.

You explained to the panel that if faced with similar circumstances, you now know that you would escalate your concerns. You said that if there were any disagreements of views with colleagues, you would speak to them privately to see whether there is a misunderstanding or whether it’s an issue that would require further escalation. You said that you are now more confident in dealing with matters such as this and understand the escalation process better.

You said that you are currently working as an agency nurse and that you work between 3-5 nights a week. You said that you have not been before the NMC previously and that

since these incidents you have been practicing for two and a half years without concerns. You told the panel of the various training you have undertaken and the importance of record keeping and escalation.

You spoke of your love and commitment to the profession and assured the panel that your past conduct will not be repeated. You stated that you now take full responsibility for your past actions. In answer to panel questions, you said that you understand that the public and patients require a certain standard of nursing. You said that although no patient harm was caused by your dishonesty, you appreciate that harm could have been caused. You said that your actions were 'awful'. You also said that it is important that patients and their families are able to trust nurses and the integrity of the profession. You said that the main lesson you have learnt is to be honest, maintain the integrity and uphold the values of the profession and not bring the profession into disrepute.

Ms Alabaster on behalf of the NMC, provided the panel with written submissions in relation to misconduct and impairment. She invited the panel to take the view that the facts found proved amounted to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision. Ms Alabaster directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Alabaster submitted that you had worked for the Trust for several years and were familiar with the applicable policies, had appropriate access to the same and was familiar with staff at the Trust, who you could escalate matters to if required.

In these circumstances, she invited the panel to find that there is compelling evidence that the care provided to patients directly by you as per the matters found proved in Charge 1 and your dishonest falsification of clinical records as proved in Charge 2 and Charge 3, fell seriously below the standards expected and set out in the Code. These standards are required to maintain patient safety and proper professional standards and thus amounted

to misconduct.

Ms Alabaster 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. This included reference 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 the Fifth Report from Shipman were engaged.

*'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.'*

Ms Alabaster submitted that your misconduct at Charge 1 and 2 involved a failure to provide direct clinical care to patients you were responsible for. Such failures put patients in your care at unwarranted risk of harm. She referred the panel to the Trust's Policy which identified the purpose and importance of clinical observations being taken as required in respect of Charge 1, and the subsequent falsification of the medical records as per Charge 2. She submitted that the policy articulates that the purpose of routine clinical observations is to detect deterioration in the clinical condition of patients, before a 'critical event' in order to intervene in that event, whilst it is possible to obtain a more favorable outcome.

She submitted that failing to take the observations accurately, or at all, risked you not noticing deterioration in a timely manner, which could, at the most serious end, have ended in a fatal outcome, which might have been preventable had it not been for the failing.

She referred the panel to the incident on 03 May 2018, where one patient whose clinical observations had not been taken by you but where you recorded a NEWS (National Early Warning Score) score of 1, was in fact scoring a NEWS of 3. She submitted that the patient was potentially more unwell than you had 'guesstimated' having not taken the required observations. She submitted that whilst there was no harm caused to this patient as a result of this, this is commended to the panel as a clear example of the kind of risk that you were taking in your actions.

Ms Alabaster submitted that there is an immediate risk to patients if an imminent deterioration is not picked up because the required clinical observations have not been taken. She further added that this behavior presented a further unwarranted risk of harm by your decision to falsify the medical records, as per Charge 2 and Charge 3. By creating false medical records, you presented an impression of the patient's health at the relevant time, which would be relied upon as being true by other professionals involved in the care of the patient. Clinical treatment including medication administration decisions would be based on falsified information, which did not portray an accurate picture of the clinical

presentation of the patient which could mean sub-optimal or, at the most serious end, harmful or contra-indicative care was provided as result. This placed patients at unwarranted risk of harm.

Ms Alabaster invited the panel to assess future risk in light of the information before it. She submitted that any repetition of such misconduct will, again, have the potential to put patients at unwarranted risk of harm.

Ms Alabaster submitted that conduct as found proved in in Charge 1, 2 and 3 has offended fundamental principles within the Code. You did not prioritise your patients in your actions, and instead prioritised your own needs. She submitted that the panel may think that this is a breach of a fundamental tenet of the profession. She further added that honesty in record-keeping associated with clinical practice is a core value that can stand alone as a breach of a fundamental tenet of the profession.

Ms Alabaster invited the panel to consider whether your conduct is capable of remediation, whether it has been remediated, and whether your actions are likely to be repeated in future. She submitted that the clinical concerns in this case can be capable of remediation through targeted and focused re-training, which can be objectively assessed, such as e-learning, participation in courses/study and/or observed/supervised practice. She reminded the panel that you have submitted training certificates relevant to record-keeping, reducing medication errors, temperature monitoring, and a course called 'Acute Care Module'. You have also provided testimonials from registered nurses pertaining to your standard of performance at work, including a reference from your current employer, 'ICARE24'

In relation to attitudinal concerns, Ms Alabaster invited the panel to consider whether you have demonstrated that you now possess sufficient skills and appreciation of the fundamental requirement to adhere to the Code and values of nursing. This included why such values are important, and that, even if they became difficult for you again in the future when at work as a nurse, you would put the interests of the patients before your

own, in a way you were unable to do at the time of the events. She further added that dishonesty is more difficult to remediate and invited the panel to use its own professional judgement.

Regarding insight and remorse, Ms Alabaster invited the panel to scrutinise whether you sought to minimise your responsibility in respect of your failings in any of way including for instance; suggesting that your difficult relationship with your senior colleague influenced your behaviour or that you were not provided with the level of assistance that you expected from the Healthcare Assistants allocated to the Ward.

She invited the panel to consider whether you have been able to satisfactorily persuade it as to how, if you found yourself in a comparable situation, you would conduct yourself differently in the future. You said, in oral evidence that you would seek to deal with differences of opinion directly and would not be afraid to escalate difficult situations via HR protocols if necessary. Ms Alabaster reminded the panel that you were not able to give any examples from your clinical practice where you have demonstrated this in practice. Ms Alabaster further reminded the panel that you have expressed remorse for your actions.

Ms Alabaster submitted that your conduct as particularised in the Charges, both in the direct clinical failings, and the subsequent dishonesty in your record- keeping, has the potential to cause the public to be concerned or to distrust nurses, which could have a damaging impact on wider healthcare provision. She invited the panel to determine that your conduct fell so far below that which is required that a marking of current impairment is required in order to *'to promote and maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for member of those professions'* and that such a finding is necessary in relation to the facts of this case.

Ms Alabaster submitted that your fitness to practice is impaired as a result of your misconduct on both public protection and public interest grounds. She strongly submitted that in a case such as this, where the original conduct was as serious as in these charges,

that a public interest finding of impairment would be appropriate, even if a finding of impairment for public protection was not made by the panel.

Mr Walters on your behalf submitted that you admitted misconduct in relation to the concerns identified and therefore agree with the NMC regarding the breaches of the Code.

In relation to impairment, Mr Walters addressed the issue of public interest concerns first. He submitted that you recognise that your reputation as a nurse has been diminished by this episode. He submitted that you have been open and candid with the panel and have not sought to undermine the seriousness of your past actions. He submitted that although no harm was caused to the patients, you appreciate that your actions had significant risks to them. He submitted that it is likely that the panel may find you impaired on public interest grounds due to the seriousness of the misconduct.

In relation to public protection concerns, Mr Walters invited the panel to find you not impaired. He submitted that this was a serious episode in your life that it has been a salutary lesson for you. He stated that you accept that you lost sight of patients briefly. Mr Walters reminded the panel that you have been open, candid and answered questions at length. He invited the panel to take the view that you have used your failings as a tool to guide you both personally and professionally. You know that the concerns could have been “all the more serious if the patients’ suffered harm”. However, he submitted that this does not in any way lessen the impact on the lesson you have learnt. He reminded the panel that you have expressed deep shame and are sorry for your actions. He submitted that you have been responsible by facing up to your failings by admitting the facts at the outset.

Mr Walters submitted that the question of remediation is one that could be answered by looking at the sequence of events. He submitted that your misconduct is capable of remediation. He referred the panel to the training courses you have undertaken in order to “plug the gaps of judgement” in your practice. He told the panel that you have been working in similar types of wards within a similar type of environment at various hospitals

since 2018 with no further concerns. He submitted that the absence of repetition is proof of remediation. In addition Mr Walters submitted that the personal testimonials, although over a year, speaks warmly and positively about you and your work as does a more recent testimonial from your current agency employer. He submitted that this is mirrored in your evidence as to how busy you have been since 2018 and attempting to remedy your past misconduct.

So far as remediation of dishonesty is concerned, Mr Walters submitted that it is acknowledged that it is a more difficult assessment for the panel to make. He reiterated to the panel that within the past two and half years there have been no further concerns regarding your practice. He submitted that you are not seeking to minimise your actions by speaking about your previous managers and the staffing concerns on the ward, but providing context to the difficult circumstances that led you to act in that manner. He submitted that you have taken the time to analyse and reflect the circumstances of the failings at the time and are now in a position where you are able to tell the panel what steps you would take in the future to avoid similar concerns.

Mr Walters submitted that there are no underlying attitudinal concerns in relation to you. He submitted that you highly value your role as a nurse and are very disappointed in yourself for placing your registration at risk. He submitted that you have taken appropriate steps to ensure that you would not take similarly poor decisions in the future and have learnt about honesty, openness and the importance of communication and putting patients first. Mr Walters therefore invited the panel to find that there is no risk of repetition.

In this regard, Mr Walters submitted that there is insufficient evidence to conclude that there is a risk of harm and wellbeing to the public. He submitted that you have provided important persuasive evidence to demonstrate that you have made meaningful change both professionally and personally. On this basis, he invited that the panel to not make a finding of impairment on public protection grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

The panel considered your oral evidence to be clear and candid. It also considered your reflective statement to be impressive.

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

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

### ***“Prioritise People***

***You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.***

#### ***1. Treat people as individuals and uphold their dignity***

*1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay*

#### ***2. Listen to people and respond to their preferences and concerns***

*2.1 work in partnership with people to make sure you deliver care effectively*

**3. Make sure that people's physical, social and psychological needs are assessed and responded to**

*3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages*

**Practise Effectively**

***You assess and deliver or advise on treatment or give help (including preventative or rehabilitative care) without too much delay, to the best of your abilities, on the basis of the best available evidence. You communicate effectively, keeping clear and accurate records and sharing skills, knowledge and experience where appropriate. You reflect and act on any feedback you receive to improve your practice.***

**6 Always practise in line with the best available evidence**

**8. Work cooperatively**

*8.1 respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

*8.2 maintain effective communication with colleagues*

*8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

*8.6 share information to identify and reduce risk*

**10. Keep clear and accurate records relevant to your practice**

*10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written sometime after the event*

*10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*

*10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

## **Preserve Safety**

***You make sure that patient and public safety is not affected. You work within the limits of your competence, exercising your professional ‘duty of candour’ and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with concerns where appropriate.***

### **13 Recognise and work within the limits of your competence**

*13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*

### **19. Be aware of, and reduce as far as possible, any potential for harm associated with your practice**

*19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*

*19.2 take account of current evidence, knowledge and developments in reducing mistakes and the effect of them and the impact of human factors and system failures*

### **Promote professionalism and trust**

***You should uphold the reputation of the profession at all times... You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other healthcare professionals and the public***

*20.2 act with honesty and integrity at all times...”*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, in these circumstances, the panel decided that your actions in charge 1, fell seriously short of the conduct and standards expected of a nurse and it was further of the view that a member of the public would consider the dishonest conduct at

charge 2 and 3 to be a very serious concern. It therefore found that the charges amounted to misconduct.

### **Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct, your fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

*determination show that his/her 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 determined that all four limbs of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your past actions. The panel finds that patients were put at risk as a result of your misconduct. Your misconduct brought the nursing profession into disrepute, in that people rely on nurses to undertake required clinical observations as well as act honestly at all times. The panel determined that your past conduct, including your dishonesty, breached fundamental tenets of the profession. The panel considered that undertaking required clinical observations and acting with honesty and integrity are fundamental tenets of nursing.

The panel went on to consider whether you were liable to put 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. In doing, the panel assessed whether your past misconduct has been remediated and whether you have demonstrated insight. In this respect, the panel assessed remediation of the concerns and the dishonesty separately.

Having regard to the test for remediation set out in the case of *Cohen v GMC*, the panel determined that your clinical concerns are capable of remediation. In considering whether they have been remedied, the panel assessed your practice since these concerns arose as well as your current level of insight.

The panel noted that since these concerns in 2018 you have regularly practised as an agency nurse. It noted that a number of positive testimonials have been provided on your behalf which attest to your good character and work ethic, including a reference from the senior consultant at the Agency you currently work with. The panel considered that since these concerns in 2018 you have also undertaken training courses relevant to the concerns such as in 'Acute Care Module' and 'Promoting professional practice skills for nurses'. The panel considered that since the concerns in 2018, you have demonstrated a period of two and a half years of practice as a nurse without further concerns.

The panel also considered that you have demonstrated insight into your past misconduct. In this regard, the panel was encouraged by the fact that you told it, during your oral evidence, that you have used your mistakes as a positive to learn and to ensure that this is not repeated in the future. The panel noted from your written reflective piece that it would appear workload stress, personality clashes, amongst other matters, impacted on you at the time of the incidents. However, the panel was satisfied from your oral evidence that you have now developed strategies and have gained confidence to address these so that these factors do not impact on your practice in the future. The panel further noted that during your oral evidence you demonstrated a good understanding of your misconduct. You took personal responsibility for your actions and it noted that you said you must put the public and patients first "rather than me being wounded". The panel was therefore satisfied that you had demonstrated insight into your past misconduct in relation to the clinical concerns.

The panel determined that you have remedied your clinical concerns and it considered that there was a very low risk of them being repeated in the future.

The panel went on to consider whether your dishonesty has been remedied.

Again, having regard to the test for remediation set out in the case of *Cohen v GMC*, the panel considered whether your dishonesty is capable of remediation. The panel considered that dishonesty is not easily remediable, however it is capable of remediation by demonstrating sufficient insight into this type of misconduct. The panel therefore assessed your level of insight into your dishonesty.

The panel noted that you have admitted to the dishonesty from the outset. The panel considered that during your oral evidence you expressed that your dishonest actions arose out of work stressors and frustration due to staffing concerns and personality clashes with colleagues. The panel considered that during your oral evidence you expressed remorse for this behaviour, and assured the panel that this would not be repeated. The falsification of records was to take pressure off yourself that you perceived was due to your relationship with a more senior colleague. You said that if a similar situation arose in the future, you would raise this and bring it to the attention of managers or HR.

The panel also considered that you have recognised the impact of your dishonesty on patients, relatives, colleagues and on the reputation of the nursing profession. The panel noted that in your oral evidence you expressed that members of the public, patients, families and colleagues place trust in nurses to act with honesty and integrity and therefore your dishonesty would have impacted on the perception members of the public have of the nursing profession and would have undermined trust in the reputation of the profession.

The panel further noted that you told it that your character has otherwise always been reliable and honest, and the testimonials provided speak to you as an otherwise honest individual.

The panel was impressed by the insight shown in your reflective piece. It noted that you said:

*“I would like to add that I am not blaming anyone for my actions, the above is an explanation to put into context the pressure I felt on my ward. I do not wish to minimise my actions and conduct in any way, I know the decision to take this action was solely mine.”*

It also noted that you said:

*“Honesty is an integral part of the NMC code of conduct and the nursing profession, and to be seen to be honest undermines the public’s trust in the nurses. Members of the public need to be able to trust nurses, because they are putting their lives in our hands, they would be angry about the breach of the trust. By my actions, I could have damaged that trusting relationship for my colleagues and my profession, and I would like to apologise sincerely for my actions.”*

The panel had regard to the fact that your dishonesty arose in particular circumstances and was not for personal gain. It considered that you have reflected on your dishonest behaviour, and on the circumstances in which it arose. The panel was satisfied that you have displayed insight into this dishonesty and its surrounding circumstances. It considered that you are unlikely to act dishonestly in the future.

Taking the current low risk of repetition of your clinical concerns in relation to patient observations and dishonesty into account, the panel considered that you are not liable to place patients at risk of harm in the future. The panel therefore determined that a finding of impairment is not necessary on the grounds of public protection.

However, 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 had regard to the fact that you repeated your misconduct on four occasions. The panel considered that the obligation to undertake required observations is a basic and fundamental element of nursing. Furthermore, on more than one occasion you recorded in patient records that you had taken the required clinical observations when in fact you had not carried them out. The panel considered that your dishonesty was serious and that patients, families, colleagues and members of the public would always expect nurses to be open and honest, and not to attempt to cover up any omissions. In these circumstances, the panel considered that public confidence in the nursing profession would be undermined if a finding of impairment were not made.

The panel therefore determined that a finding of impairment is necessary on public interest grounds, in order to maintain public confidence in the nursing profession and in order to declare and uphold proper standards of conduct and performance for members of the profession.

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

## **Sanction**

The panel considered this case very carefully and decided to make a caution order for a period of five years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

## **Submissions on sanction**

Ms Alabaster informed the panel that a caution order for a period ranging from 3- 5 years is sufficient in the circumstances of this case. She outlined aggravating and mitigating factors for the panel to consider. Ms Alabaster referred the panel to the SG, and outlined each of the sanctions in ascending order. She submitted that taking no action would not secure public trust in nurses and it would not promote and maintain proper professional standards and conduct. She submitted that a caution order is appropriate given the panel's determination in respect of impairment, stating that you have demonstrated good insight and has a low risk of repetition. She submitted that a caution order is the least restrictive sanction. She submitted that it is declarable and discoverable during the time in which it is in force. She submitted that a range of 3-5 years is appropriate given that you pose no risk to the public and patients. However, given the seriousness of the charges, the length of the order should be in the upper end. She submitted that within this parameter, the seriousness of the misconduct can be marked.

Ms Alabaster submitted that a conditions of practice order would not be appropriate, given the panel's findings that the risk of repetition of is low, and its finding of impairment on public interest grounds alone. She submitted that a conditions of practice order would be a suitable sanction where there are identifiable areas of practice that need remediation that do not require temporary or permanent removal. She submitted that there are no clinical concerns in this case and that a conditions of practice order would not be merited or suitable.

Ms Alabaster submitted that a suspension or striking-off order is not necessary or appropriate in this case considering you are currently working without restrictions safely, and with no concerns at the moment and have been doing so for the past two and a half years.

Mr Walters agreed with the NMC that a caution order would be the appropriate sanction in this case. He further agreed with the aggravating and mitigating features identified by the

NMC. He reminded the panel that you have demonstrated good insight and provided evidence of remediation. He submitted that a caution order would reinforce and mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse. He submitted that such an order would serve the public interest and would allow you to continue to provide nursing services. He submitted that the length of the order is a matter for the panel.

Mr Walters submitted that temporary or permanent removal from the register would have a detrimental effect to you and your family. He reminded the panel that you are the principle breadwinner of your family. He submitted that any higher sanction other than a caution order would be inappropriate and disproportionate given the level of insight and remediation you have demonstrated.

### **Decision and reasons on sanction**

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Patients were placed at risk of harm, albeit no actual harm materialised; and
- You displayed a pattern of misconduct on four different shifts from 23 April 2018 to 03 May 2018.

The panel also took into account the following mitigating features:

- You demonstrated that you currently have good insight, reflection and remediation;

- You have worked for two and a half years since these incidents without restriction and with no further concerns about your practice;
- A number of positive testimonials were provided that attest to you and your practice;
- You made admissions to your misconduct at the outset;
- You have undertaken relevant training that remediated your past conduct;
- You have kept up to date with your practice; and
- The motive for your misconduct was not for financial gain.

Before going on to consider the sanctions in ascending order, the panel assessed the dishonesty and its level of seriousness.

The panel had regard to the NMC's guidance on considering sanctions for serious cases as well as for cases involving dishonesty, which invites it to take a number of factors into account when assessing the seriousness of the dishonesty. The panel noted that this dishonesty was not for financial gain or to conceal a mistake but it did place patients at risk of harm. It also considered the circumstances in which the misconduct occurred and that your dishonesty was a poorly judged reaction to the perceived pressure you were under from a senior colleague. Taking into account the circumstances surrounding the dishonesty, it considered that this was an instance of short duration of four shifts, between 23 April 2018 to 03 May 2018, and you admitted to the concerns at the earliest opportunity.

The panel noted that since these incidents occurred in 2018, you have continued to work as a nurse, and it considered that you had used these incidents to develop significantly. The panel had before it evidence of good practice since 2018, with positive testimonials from your colleagues who were aware of the allegations, as well as evidence of being open and honest with your employer about these proceedings and the misconduct. It also noted your positive engagement with the NMC proceedings. The panel considered these all relevant contextual matters in deciding what action to take in this case. Having regard

to these matters as a whole, the panel judged that your case fell at the lower end of the dishonesty spectrum.

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

The panel first considered whether to take no action. The panel reminded itself of its earlier finding of impairment on public interest grounds, given the dishonesty which occurred in this case and the fact that members of the public would expect nurses to always be open and honest. The panel noted that only in exceptional cases would taking no action, following a finding of impairment, be appropriate, and it did not consider this to be such a case. The panel considered that taking no action would not satisfy the public interest, as it would fail to sufficiently mark the misconduct in this case. This would also not maintain confidence in the nursing profession and in the NMC as a regulator, and it would not declare and uphold proper professional standards.

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 had regard to the insight and remorse you have displayed during this hearing. It again had regard to the evidence it had of safe and effective nursing practice since these incidents occurred, and your growth and development as a nurse during that time. The panel also reminded itself of its earlier determination that there was a low risk of repetition of this misconduct, and therefore a finding of impairment was not necessary on public protection grounds.

The panel noted that the public interest includes protecting the health, safety and wellbeing of members of the public, maintaining public confidence in the profession and in the NMC as a regulator and declaring and upholding proper professional standards. It had regard to the misconduct in this case, and it gave consideration as to whether a caution

order would be sufficient to mark the seriousness of the misconduct and to uphold the public interest, such that members of the public would consider that an appropriate message had been sent with regard to the behaviour and standards expected of a registered nurse.

The panel conducted a balancing exercise to determine what sanction would be the most appropriate and proportionate in all of the circumstances. It went on to consider whether to impose a more restrictive sanction.

The panel considered whether to impose a conditions of practice order. It bore in mind that any conditions imposed must be measurable, practicable and workable. The panel reminded itself that it had determined there to be a low risk of repetition of the misconduct in this case, and had therefore found your fitness to practise to be impaired on public interest grounds alone. The panel also noted that given that there were no current areas of clinical concern in this case, with no public protection issues identified, the panel determined that it would not be appropriate to impose a conditions of practice order.

The panel went on to consider whether to impose a suspension order or whether permanent removal was necessary. It had regard to the SG, which states that temporary removal and permanent removal from the register may be appropriate. It determined that you have shown no deep seated attitudinal issues, have learnt from your mistakes and shown remorse, insight and remediation. The panel also noted that these incidents occurred during a period when you perceived you were under a great deal of work pressure. The panel also took into account that there is no evidence of direct harm to patients and you are currently working as a nurse with no clinical issues. The panel considered in the circumstances such an order was not required or proportionate to uphold the wider public interest, and it would in fact be contrary to the public interest, taking account of all the evidence and matters it had considered during this hearing.

Whilst the public interest involved considerations about how a member of the public may view the sufficiency of any sanction which the panel imposed, it noted that a fully informed

member of the public would be aware of the totality of circumstances in this case. In such circumstances, the panel also had regard to the public interest in ensuring an otherwise competent nurse being able to continue practising.

The panel concluded that a caution order is the most appropriate and proportionate sanction in the circumstances of this case.

Assessing all aspects of this case, the panel determined that a caution order for five years was the most appropriate and proportionate response. This would mark the seriousness of the misconduct, the importance of maintaining public confidence in the profession and also send the public and the nursing profession a clear message about the standards required of a registered nurse.

Throughout the duration of the caution order, your current employer, any prospective employer and any member of the public enquiring about your registration will be on notice that your fitness to practise has been found to be impaired and that your practice is subject to a restriction.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This decision will be confirmed to you in writing.

That concludes this determination.