

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

**Substantive Hearing (held virtually)
6 – 9 October 2020**

Name of registrant: Stella Ayoka Law

NMC PIN: 94C0592E

Part(s) of the register: Nursing – Sub part 1
RNMH: Registered Nurse - Mental Health (30 August 1997)

Area of registered address: Northern Ireland

Type of case: Misconduct

Panel members: Nigel Hallam (Chair, lay member)
Paul Webb (Registrant member)
Tricia Breslin (Lay member)

Legal Assessor: Bruce Erroch QC

Panel Secretary: Rob James

Nursing and Midwifery Council: Represented by Robert Rye, Case Presenter

Mrs Law: In attendance and not represented

Facts proved: 1a, 1b, 1c, 2

Facts not proved: None

Fitness to practise: Impaired

Sanction: Suspension order (4 months)

Interim order: Interim suspension order (18 months)

Details of charge (as amended)

That you as a Registered Nurse:

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:
 - (a) You failed to notify the NMC of your nursing appointment with Four Seasons Health Care within 14 days of that appointment.
 - (b) You failed to immediately inform your employers, Four Season Health Care that you were made the subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions as listed.
 - (c) You failed to inform Four Seasons Health Care Occupational Health Practitioner, that you were made the subject of a conditions of practice order under the NMC's fitness to practise procedures, disclosing the conditions.
2. Your actions in charge 1 (b), and/or 1(c) were dishonest in that you intended to mislead Four Seasons Health Care for the purposes of maintaining or gaining employment with them.

In light of the above your fitness to practise is impaired by reason of your misconduct.

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

At the outset of the hearing, Mr Rye, on behalf of the NMC, made a request that parts of this be held in private on the basis that proper exploration of your case involves discussion of your health condition. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold

hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having had regard to the evidence before it, the panel noted that your health was strongly linked with the charges that have been made against you. It considered that much of the evidence relating to your health will be discussed during the hearing and that it may be the case that evidence relating to your health emerges unexpectedly. In light of the importance of maintaining your confidentiality, the panel decided that the entirety of the hearing should be heard in private.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Rye, on behalf of the NMC, to amend the wording of charges numbers 1a and 2.

The proposed amendments were to delete the word “nursing” in charge 1a and to insert the words “maintaining or” in before “gaining” in charge 2. It was submitted by Mr Rye that the proposed amendments would provide clarity and more accurately reflect the evidence.

Charge 1a is currently composed as:

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:
 - (a) You failed to notify the NMC of your nursing appointment with Four Seasons Health Care within 14 days of that appointment.

And would be amended to read as:

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:

- (a) You failed to notify the NMC of your appointment with Four Seasons Health Care within 14 days of that appointment.

The amendment was to remove the word “nursing” from charge 1a.

In relation to the second amendment in relation to charge 2, Mr Rye submitted that the amendment was to add the words “maintaining or”.

Charge 2 currently reads as:

2. Your actions in charge 1 (b), and/or 1(c) were dishonest in that you intended to mislead Four Seasons Health Care for the purposes of gaining employment with them.

And would be amended to read as:

2. Your actions in charge 1 (b), and/or 1(c) were dishonest in that you intended to mislead Four Seasons Health Care for the purposes of maintaining or gaining employment with them.

You told the panel that you had originally based your evidence on the charge that was originally before you and said that it would be unfair if they were amended having been originally drafted in 2018. You confirmed that you objected to both amendments and said that charge 1a would now be changed to relate to your management and not just your nursing.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

The panel first considered the application in relation to charge 1a. It took account of the NMC's submission that it would accurately reflect the evidence before the panel. However, it also noted your submission that to amend the charge at this stage would not be fair following your preparation for the case. The panel considered that removing the word "nursing" from charge 1a would significantly alter charge 1a. It was of the view that, despite the NMC's submission, it would not be fair to amend the charge at this late stage. The panel therefore rejected the NMC's application to amend charge 1a.

The panel next went on to consider the proposed amendment in relation to charge 2. It considered that this amendment brought clarity to the allegation. It considered that, having regard to the merits of the case and fairness of proceedings, the amendment would not cause injustice. It therefore agreed that the amendment in relation to charge 2 could be made.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Rye and also those made by you.

The panel was 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 a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witness, who gave evidence under affirmation, called on behalf of the NMC:

- Ms 1: Head of Operational Quality at Four Seasons Health Care

The panel also heard evidence from you under affirmation.

Background

On 25 February 2019 an interim conditions of practice order for a period of 18 months was made on your nursing practice following concerns that had been alleged in relation to your health. You had been due to start work at Balmoral View Care Home (“the Home”) on that day having successfully applied for the role of Home Manager. You told Ms 1 that you were not able to start work at the Home on 25 February and therefore commenced the role on 6 March 2019.

Under RQIA (Regulation and Quality Improvement Authority) regulations in Northern Ireland, all registered managers must be registered nurses and must have a valid NMC registration.

Upon starting the role at the Home you completed a questionnaire on 27 February 2019 and had an occupational health assessment on 8 March 2019 to confirm that you were fit to work. Your role as Home Manager included a probation period of six months.

On 22 June 2019, Ms 1 was informed by another manager that you were subject to an interim conditions of practice order. On 24 June 2019 Ms 1 spoke to you in the presence of Four Seasons’ HR business partner. You called the NMC on this day to confirm that you had started a new job as Home Manager. Later that day, Ms 1 also contacted the NMC to inform it of the situation and was sent a copy of the interim conditions. Ms 1 later advised you that you were suspended from your role subject to an internal investigation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and you.

The panel considered the evidence of the witnesses and made the following conclusions:

The panel considered that Ms 1 was honest throughout her evidence and answered the questions that were put to her by the panel clearly. Further, she was open when she did not know the answer to a question. The panel was of the view that Ms 1 was calm, measured and that her evidence was credible. It could see no reason for her not to tell the truth.

It considered that throughout your evidence you suggested that the onus was not on you to inform the necessary parties that you had interim conditions on your practice and indicated that if asked directly you would have disclosed this information. You gave the impression that your failure to do this was an oversight rather than a calculated act and appeared to place the burden at the employer, occupational health department and the NMC.

The panel recognised that it was clear that the interim conditions related to your health and you confirmed during this hearing that you understood them and you had previously received a copy of them at the previous hearing on 25 February 2019. However, during your evidence, the only consistent thread was that you had told Occupational Health that you had suffered from a (PRIVATE).

During your evidence you, at first, denied that you knew that the role as Home Manager would involve nursing duties but later conceded that you would be required to fulfil some nursing duties in the event of possible staff shortages. You also took the time to mention a folder which apparently contained a copy of your interim conditions of practice. You said that you had placed this folder with other staff files in a cabinet in the manager's office at the Home. You had failed to mention this folder at any stage prior to the present hearing.

The panel noted that you had previously been a care home manager in Northern Ireland for several years and therefore would have been fully aware of the RQIA requirements. However, it was apparent that this was not the case.

Overall, the panel determined that, due to the above changes in your evidence, there was a concern as to your credibility.

The panel then considered each of the disputed charges and made the following findings.

Prior to its consideration of the particular charges, the panel had regard to the stem of the charge and the inclusion of the words “failed to”. It understood that this implied that you had a duty to undertake the action that is included in the charge. The panel took account of the fact that the “failed to” included in the main stem of the charge related to your lack of compliance with an interim conditions of practice order made on 25 February 2019. The panel had sight of the interim conditions of practice order and noted that it was addressed to you and included your PIN. It took account of the details of the interim conditions of practice and concluded that it was apparent that, as a registered nurse, it was your duty to comply with the interim conditions of practice.

Charge 1a

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:
 - (a) You failed to notify the NMC of your nursing appointment with Four Seasons Health Care within 14 days of that appointment.

This charge is found proved.

As with the stem of the charge, the panel first had to make the finding that it was your duty to notify the NMC of your nursing appointment with Four Seasons Health Care. It took account of interim condition 6 and decided that it was apparent, as a registered nurse, that it was your duty to do this.

The panel noted that you started employment at the Home on 6 March 2019. Your original start date was 25 February 2019 but you had asked for this to be put back. The first time that the NMC had been informed of your employment at the Home was on 24 June 2019 when you called the NMC Case Officer informing them that you had started a new job as a Home Manager and needed to tell the NMC due to the requirements of your interim conditions of practice order. This was after you had been instructed to do so following an earlier meeting with Ms 1. You had already been employed for over three months prior to this. Ms 1 also called the NMC on this day to inform them that she had only just been informed that you had interim conditions on your practice and she was sent a copy of the interim conditions of practice order at that time.

Ms 1's evidence clarified that, although you would primarily be the Manager of the Home and would undertake those specific management duties, you may have been called upon to perform nursing duties if necessary. She also reminded the panel of the RQIA requirement for you to hold a valid NMC PIN if working as a Registered Manager in Northern Ireland. You acknowledged in your own evidence that the Home Manager's role included overseeing the nursing team, operational issues and competence of staff and that the Home Manager could be called upon to undertake nursing duties if necessary. The panel was satisfied that the Home Manager's role was broad enough to be considered a nursing appointment. The panel considered that this was reinforced by the RQIA regulations requiring that Home Managers be registered nurses.

The panel was of the view that the evidence before it was succinct and the timeline was clear. It therefore found the charge proved.

Charge 1b

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:

- (b) You failed to immediately inform your employers, Four Season Health Care that you were made the subject to a conditions of practice order under the NMC's fitness to practise procedures and disclose the conditions as listed.

This charge is found proved.

The panel took account of the evidence of Ms 1. She stated that following your interview on 21 January 2019 you had accepted the role of Home Manager at the Home. She said that you were due to start work on 25 February but had asked for this to be delayed so you started at the Home on 6 March 2020.

You told the panel of a folder that included details of your registration along with other members of staff's details who worked at the Home. The panel noted that Ms 1 had not mentioned this folder during her evidence and was not asked to comment on this folder. In fact, Ms 1 had to request the details of the interim conditions of practice from the NMC on 24 June 2019.

The panel took account of the particular interim condition that referred to informing your employers of the interim conditions of practice order, namely interim condition 8a. It considered that the interim condition was clear and also heard your evidence that you understood the interim conditions of practice order and received a copy of them following the interim order hearing on 25 February 2019. It was your obligation to inform Four Seasons Health Care of the interim conditions of practice order but you failed to do so. Ms 1 only found out about the order when she was told by another manager at the Home.

On the basis of the evidence before it, the panel found the charge proved.

Charge 1c

1. Failed to comply with an Interim Conditions of Practice Order that was imposed by the Investigation Committee on the 25th February 2019, in that:

- (c) You failed to inform Four Seasons Health Care Occupational Health Practitioner, that you were made the subject of a conditions of practice order under the NMC's fitness to practise procedures, disclosing the conditions.

This charge is found proved.

The panel heard Ms 1's evidence that it was necessary for you to undertake an assessment with occupational health prior to commencing work at the Home to ensure that you were fit to work.

It also noted that form included in the NMC bundle entitled "Fitness for work assessment form". This form included a section at 9 which asked the question "have you been restricted or prevented from doing any work activities due to health problems in the last 12 months". In the tick box section next to this question you ticked the box in the column for "No". The panel noted that this form was completed by you on 27 February 2019, two days after your interim order hearing which had taken place due to concerns relating to your health. The panel reminded itself that restrictions were made upon your practice, in relation to your health, at the interim order hearing by way of an interim conditions of practice order.

The panel also had regard to a discussion that you had with an occupational health practitioner on 8 March 2019. Again, it noted that you failed to inform the practitioner of the restrictions on your practice. It took account of your evidence that you had informed Occupational Health of (PRIVATE) and also heard that you insisted that you would have told the practitioner about the interim conditions of practice but that you were not directly asked. It was also open for you to inform Occupational Health at any point thereafter.

The panel concluded that, despite being given clear opportunity to do so, you failed to inform the Four Seasons Occupational Health Practitioner of the interim conditions of practice order that had been made. The panel therefore found the charge proved.

Charge 2

2. Your actions in charge 1 (b), and/or 1(c) were dishonest in that you intended to mislead Four Seasons Health Care for the purposes of maintaining or gaining employment with them.

This charge is found proved.

The panel accepted the advice of the legal assessor who, in addressing the panel in relation to the issue of dishonesty, referred to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards dishonest”.

The panel took account of your mindset at the time in question. You had attended the interim order hearing on 25 February and had stated that you understood the interim conditions of practice that had been made. You told the panel that these interim conditions had been explained at the hearing and a copy had been provided to you.

The panel had regard to the fact that you had plenty of opportunities to inform Four Seasons Health Care, during your employment, of the interim conditions of practice order.

Having had the job confirmed prior to the interim order hearing, you should have done this immediately. You also could have informed them on your first day at work or during the assessment by the Occupational Health Practitioner.

It only became apparent to Four Seasons Health Care that you were subject to an interim conditions of practice order when another manager informed Ms 1 of this. Your responsibilities as Home Manager included checking the PINs of staff that you employed so the panel was concerned as to how you would fail to understand the importance of remembering that your own NMC PIN needed to be live and free from any restriction.

You told the panel that you would have told Four Seasons Health Care about the interim conditions of practice order if you had been asked about it directly but you were not. The panel considered that it may be your mindset was that if you did not mention it at all, you were not telling a lie. However, dishonesty can arise through omission as well as through commission. It is dishonest not to make a disclosure which a person ought properly to make. In failing to inform Four Seasons Health Care and their Occupational Health practitioner of the interim conditions of practice order, the panel considered that you were being dishonest, applying the objective standards of ordinary, decent people.

The panel took the view that there was no reasonable explanation for your failure to disclose to Four Seasons Health Care or their Occupational Health practitioner about the interim conditions of practice order. The interim conditions were clear and stated the relevant people that you needed to inform in relation to them. You knew that you needed to disclose this information.

The panel determined that in not informing Four Seasons Health Care and the Occupational Health Practitioner, you were dishonest. It therefore found the charge proved.

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.

Evidence and Submissions on misconduct

You gave evidence under affirmation. You said that you feel that you have paid a sufficient price for what you did and that you do not think that you are dishonest in the way that the panel concluded at the facts stage. You said that you do not think that you would repeat your actions as you would act in a different way and would inform all of the relevant parties. You said that if the interim conditions had been clear to you, you would have followed them straight away but did not feel, at that time, that your medical condition would impact on your role as registered manager.

Ms 2 was invited by you to give evidence at this stage. She said that she had known you in a professional capacity for the last 10-12 years in her previous role as Four Seasons Health Care Regional Manager and explained that you had worked in various care homes,

including those that homed residents with complex needs and dementia. She said that you were skilled in taking charge of homes that were underperforming and turning them round and had also worked in bigger homes. Ms 2 said that you are a very experienced nurse and that she never had any issues with you. She said that you were a very competent, experienced manager who is good in a crisis and that you had last worked together in 2017. Ms 2 told the panel that she had witnessed you undertaking nursing duties on average once or twice a week.

In coming to its decision, Mr Rye directed the panel 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.'*

Mr Rye invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of "The Code: Professional standards of practice and behaviour for nurses and midwives (2015" (the Code) in making its decision.

Mr Rye submitted that your failure to comply with the interim conditions of practice that had been made breached the duty of candour that nurses should follow. He submitted that the NMC had decided that appropriate protection was necessary to allow you to continue to practise as a registered nurse and that, if Four Seasons had been aware of the interim conditions, it would have installed the necessary safeguards to protect the public. Due to your failure to comply it was unable to.

Mr Rye submitted that if the trust that people have in nurses to be open and honest is broken between the nurse, the employer and the NMC and if this is seen to be broken then the public would lose trust in the profession and the regulator. He further submitted that your professionalism and trust was called into question due to your actions and that you fell beneath the standard required thus amounting to misconduct.

Submissions on impairment

Mr Rye 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 cases of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (Admin).

Mr Rye submitted that all four limbs of Grant are engaged in this matter and that although there is no evidence of harm to residents in your care, there are still public protection issues as your failure to disclose the interim conditions of practice could have impacted on those in your care. Further, he submitted that the fact that Occupational Health were not made aware of the interim conditions meant that they were unable to make additional arrangements that they may have wanted to.

Mr Rye submitted that if you had fallen unwell on shift you could have put your residents at risk of harm. He submitted that you have breached the duty of candour and trust that you must follow as a registered nurse and reminded the panel of a nurse's duty to act with integrity at all times.

Mr Rye submitted that you ignored your duty to inform all parties of the interim conditions of practice order and that training courses or supervision are unlikely to remediate your actions. He advised that the panel should take into consideration any evidence of insight and remorse and also note your personal circumstances. Mr Rye concluded that your fitness to practise is impaired on both public protection and public interest grounds and submitted that it would send a poor message in relation to the standard of nursing if the panel did not make the same finding.

You submitted that if you had known at the time what you know now you would not have acted in the way that you did. You said that you have waited a long time for this case to be

heard and that you did not even realise what you had done at the time. You said that you are sorry for everything and said that you don't think that this will happen again.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

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:

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body.

23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your failure to disclose your interim conditions of practice order to your employer and the Occupational Health Practitioner while also failing to inform the NMC of your employment was serious and could have put residents in your care in danger as your health condition was not taken account of and safeguarded against. The panel considered that the interim conditions of practice were very clearly set out in relation to whom you needed to inform of their existence. You stated that you had informed Occupational Health Practitioner of your health condition but the panel was mindful that this was not the same as complying with the interim conditions of practice order. You failed to do this and demonstrated actions which breached the trust between residents at the Home and the nurses who care for them.

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

Decision and reasons on impairment

The panel next went on to decide if as a result of 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 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 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 recognised that no residents were harmed due to your failure to disclose your interim conditions of practice order to your employer. However, it noted that if you had become ill at work, your employer not being aware of your health condition, there was no safeguard in place that would have protected against this. The panel therefore determined that you put residents in your care at risk of unwarranted harm. Your failure to disclose the interim conditions of practice to your employer, or inform the NMC of your employer's details brought the profession into disrepute and breached a fundamental tenet of nursing. Further, your actions were dishonest.

The panel considered the questions suggested in the case of Cohen. It asked itself the questions; is the conduct easily remediable? Has it been remedied? And is it highly unlikely to be repeated?

The panel had regard to your evidence and was of the view that you have demonstrated some degree of insight. You said that you would not act in this way again but still dispute the charge and continue to state that you would have disclosed the details of the interim conditions of practice order if you had been asked directly about it. You seem to think that it was for others to ask you the questions about the restrictions on your practice rather than disclose the necessary information as you were clearly required to.

The panel noted that you have shown remorse for your actions and have stated that you would not repeat what happened. However, it was of the view that you have spent time focusing on the effect that the situation has had on you and have not reflected on how your actions could have affected the patients in your care, your nursing colleagues, the

nursing profession as a whole or the NMC as your regulator. The panel considered that further reflection was necessary before it could be considered that you have achieved full insight into your misconduct.

The panel was satisfied that the misconduct in this case is capable of remediation. However, it was of the view that you have not yet remediated this conduct yet and will not be able to until you have demonstrated the necessary insight. The panel is therefore of the view that there is a risk of repetition based on your lack of insight into your actions. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. The panel was of the view that a right thinking member of the public would be concerned if your fitness to practice was not found to be impaired following a finding of dishonesty relating to a failure to disclose restrictions on your practice that had been put in place due to concerns in relation to your health.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that registrant's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of four months. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Mr Rye informed the panel that in the Notice of Hearing, the NMC had advised you that it would seek the imposition of a suspension order for a period of 12 months if it found your fitness to practise currently impaired. Mr Rye outlined what the NMC perceived to be the aggravating and mitigating factors of the case and directed the panel to the NMC's guidance entitled "*Considering sanctions for serious cases*" and in particular the sub section entitled "Cases involving dishonesty".

Mr Rye submitted that the fact that you failed to disclose the interim conditions of practice order was a deliberate act for your benefit. He further submitted that to take no action, make a caution order or a conditions of practice order would not adequately protect the public or address the public interest in the case. Mr Rye submitted that the panel may find that temporary removal from the register is appropriate and adequate but if it does not agree it should go on to consider making a striking off order.

You told the panel that your daughter would read a statement that had been previously prepared by you. The statement is as follows:

"I fully understand now that I should have disclosed the conditions on my pin, and I should have informed my employer, NMC and occupational health of my appointment. I am deeply sorry for this.

I feel I have been misunderstood, I was not saying that I would have disclosed the information had I been asked – I was trying to explain that I had misunderstood the

*terms of my condition relating to my being appointed in a nursing role. However, I agree It is my full responsibility to inform the relevant parties *my employer, occupational health and the NMC**

I don't want it to seem that I am trying to dispute the charges, or that I do not agree with the importance of the conditions on my PIN – I had misunderstood the condition that required me to inform the relevant parties of my appointment as a registered nurse, however, regarding the other conditions I do believe that if I was to go back there are a number of things I would do differently.

I don't believe that others needed to ask me for me to disclose information, it was an error on my part that I did not inform the NMC, my employer and occupational health of the conditions on my pin. It was a requirement, and my actions fell very short of the standard that is expected of someone on the register.

I have had ample time to understand not only the ramifications of my actions, but I understand and respect why the NMC took this case so seriously – I do not neglect that my actions had an effect on those around me, my worry is not for myself but for the others that were impacted by me, and those that could have been. I understand that the public relies on the honesty of those in this profession, and that it is imperative that they can trust those in my position to be honest, to be someone they can rely on, and someone that they can trust with their life. My colleagues require trust in me as well, and so do the residents in my home. I betrayed this trust through my actions, and I am full of regret. There truly is not risk of this ever happening again, I understand the importance of the NMC in protecting the public, as well as the many individuals employed in the nursing and midwifery professions.

I think if a member of the public had full understanding of the case, as well as my remorse for my actions, the amount of time I have had to understand the error of my ways, what my family went through when I lost my pin and moreover how committed I am to making sure I never make any of these mistakes again, I believe

they may I understand that I am not a threat but a woman who made a terrible mistake.

Personal experience

- I loved my job, and I still love my job, my family bear witness to how hardworking I am outside of the office – even after the workday is done! Going in on weekends to check the home and ensure everything is running smoothly. This is the main reason I don't want my pin to be removed as I want to continue to help people, and this job gives me the avenue to do so.

(PRIVATE)

I was careless and I hope I can be forgiven for my actions, by not only the NMC but the public, my residents, my colleagues and everyone who was affected by my actions.”

After being asked a question by the panel chair you said that this situation had been a real eye opener for you and you have never failed to deliver the care that has been asked of you. You said that you now realise that you made a terrible mistake and you have apologised for it. You said that you are a nurse and you care for people and your colleagues and that taking you away “*is going to ruin me*”. You told the panel that you have been working as a Home Manager since July 2020 as the interim suspension order on your practice was revoked at that time.

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, it may have such consequences. The panel had careful regard to the

Sanctions Guidance (“SG”). The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel accepted the advice of the legal assessor.

The panel took into account the following aggravating features:

- Your misconduct was a clear breach of the interim conditions of practice order;
- You were in a position of seniority as the registered manager of the Home;
- Your behaviour demonstrated attitudinal concerns;
- Your behaviour was a breach of duty of candour, professionalism and trust;
- There was potential harm to residents in your care;
- Your misconduct related to three separate incidents of failing to inform parties of important information relating to your ability to practise as a registered nurse.

The panel also took into account the following mitigating features:

- Although the panel had previously stated that you demonstrated a degree of insight at the impairment stage, after hearing your submissions at sanction, it was of the view that you are beginning to understand the magnitude of your failings and your insight is developing;
- Ms 2’s evidence was that you are an experienced nurse who she had no concerns over in relation to your competence;
- There was no clinical failing.

Before making a decision on sanction, the panel had regard to the NMC guidance entitled “*Considering sanctions for serious cases*” and in particular the sub section entitled “Cases involving dishonesty”. It had regard to the fact that, although your dishonesty involved a financial gain from a breach of trust (insofar as it resulted in you gaining or obtaining employment), it did not involve a direct risk to patients in your care and did not amount to systematic or longstanding deception. The panel therefore considered that the dishonesty

is this case lay between serious and less serious dishonesty having encompassed some elements of both.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict registrant's practice would not be appropriate in the circumstances. The SG 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 considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

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

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

The panel recognised that your omissions, in failing to inform the relevant parties of your interim conditions of practice order fell far below the standards of a registered nurse and needed to be marked. You demonstrated a level of developing insight at the sanction stage but the panel considered that you had previously put responsibility on others to ask you if you were permitted to practise unrestricted.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a

suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse and the reputation of the NMC, as your regulator.

The panel determined that a suspension order for a period of four months was appropriate in this case to mark the seriousness of the misconduct. In making this decision, the panel bore in mind the fact that you were previously subject to an interim suspension order from 16 July 2019 to 9 July 2020. It took into account the cases of Kamberova v NMC [2016] EWHC 2955 and Akhtar v GDC [2017] EWHC 1986 (Admin). From these it deduced the following principles. (1) Regulatory sanctions are not like sentences in the criminal courts: there is no principle that, like time spent in custody, time spent on an interim order must be deducted from a substantive sanction. However, (2) common fairness dictates that panels must take into account any interim order and its effect on a registrant, but (3) as long as the issue is properly considered, a panel is entitled to conclude in any given case that the interim order does not affect the substantive order.

The panel also considered the NMC's guidance on how to consider sanction in light of a previous interim order. The Panel was mindful of the fact that the interim order had affected your ability to work in your chosen role and had affected you financially. It decided that this had to be taken into account in assessing the length of a suspension order. Not to do so would be unfair to you. However, the public interest and the

reputation of the profession and the regulator must be the uppermost interests. Balancing these against your interests, the panel considers that a suspension order of four months is the appropriate order.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- An update on any paid or unpaid work that you have undertaken while suspended from nursing;
- Further reflection on your omissions and how you would deal with anything similar in future;
- Written testimonials from nursing colleagues who have worked alongside you;
- Continued engagement with the NMC and attendance at the review of this order.

This will be confirmed to you in writing.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Rye. He made an application for an interim suspension order for 18 months which would cover the appeal period. He further submitted that, given the nature of the order, an interim order is necessary for the protection of the public and is otherwise in the public interest.

You made no submission in relation to the application.

Decision and reasons on interim order

The panel was satisfied that an interim 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.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

If no appeal is made, then the interim suspension order will be replaced by the substantive suspension order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.