

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

**Substantive Hearing
15 – 19 November 2021**

Virtual Hearing

Name of registrant:	Mrs Helen Tucker
NMC PIN:	95J0050W
Part(s) of the register:	RNA: Registered Nurse – Adult (October 1998)
Area of registered address:	Swansea
Type of case:	Misconduct
Panel members:	Mary Hattie (Chair, Registrant member) Chris Thornton (Lay member) Janet Fisher (Lay member)
Legal Assessor:	John Donnelly
Panel Secretary:	Sherica Dosunmu
Nursing and Midwifery Council:	Represented by Louis Maskell, Case Presenter
Mrs Tucker:	Not present and unrepresented
Facts proved:	Charges 1, 2
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Tucker was not in attendance and that the Notice of Hearing letter had been sent to Mrs Tucker's registered email address on 6 October 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and means of joining the virtual hearing and, amongst other things, information about Mrs Tucker's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Mr Maskell, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Tucker has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Tucker

The panel next considered whether it should proceed in the absence of Mrs Tucker. It had regard to Rule 21 and heard the submissions of Mr Maskell.

Mr Maskell invited the panel to continue in the absence of Mrs Tucker on the basis that she had voluntarily absented herself. He referred the panel to an email from Mrs Tucker in response to the Notice of Hearing, dated 6 October 2021, in which she stated:

'I do not wish to attend'

Mr Maskell also referred to an email from Mrs Tucker dated 7 November 2021, which stated:

'I am happy for the panel to proceed in my absence'

Mr Maskell submitted that there was no reason to believe that an adjournment would secure Mrs Tucker's attendance on some future occasion and there is clear public interest in the expeditious disposal of this case.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mrs Tucker. In reaching this decision, the panel has considered the submissions of Mr Maskell, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Tucker;
- Mrs Tucker has informed the NMC in writing that she does not propose to attend the hearing and is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Witnesses are due to give evidence, and may be caused inconvenience if there was a delay to this hearing; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Tucker in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered address and email. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Tucker's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

In these circumstances, the panel has decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Tucker. The panel will draw no adverse inference from Mrs Tucker's absence in its findings of fact.

Details of charge

That you, a registered nurse:

- 1) On 11 June 2019, produced and/or caused to be submitted to Thornbury Nursing Services an invalid training certificate for an Immediate Life Support Course.

[FOUND PROVED]

- 2) Your actions as set out in charge 1 were dishonest in that doing so you deliberately sought to represent that you had completed the Immediate Life Support Course when you knew that you had not. **[FOUND PROVED]**

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

Background

The NMC received a referral from Thornbury Nursing Services (Thornbury), on 18 June 2019. Thornbury is a nursing agency which provides temporary nursing staff to the National Health Service (NHS) and private health sector. Mrs Tucker first registered with Thornbury in April 2006. At the time of the concerns raised in the referral, Mrs Tucker was working as a registered nurse at Morriston Hospital. Mrs Tucker commenced employment with Morriston Hospital in March 2016.

The requirement at Thornbury is that all registered nurses must undertake a mandatory Immediate Life Support (ILS) course every 12 months. On 23 January 2018, Mrs Tucker completed a life support course, which was required by Thornbury to be updated by 22 January 2019. The referral alleges that between November 2018 and January 2019, Mrs Tucker was sent a number of reminder emails in relation to the expiry of her 2018 ILS certificate.

In 2019, the ILS course was run at the Philips Parade Training Centre by the Resuscitation Board on 2 April 2019, and on 29 March 2019 at a different venue. The Resuscitation Board produces the certificates that are awarded to each of the candidates on completion of the course.

On 11 June 2019, the Regulation and Training Compliance (RTC) Team at Thornbury received an email from Mrs Tucker with a certificate for the ILS course indicating that she had undertaken the course on 1 April 2019. On 12 June 2019, Mrs Tucker sent an email to the RTC Team with an enquiry as to why the certificate she had recently provided was not showing up on her training records.

Concerns were raised regarding the validity of the certificate as it appeared the date had been altered. The course provider confirmed that no such course was undertaken on 1 April 2019 and Mrs Tucker did not attend the ILS course held on 2 April 2019. It is therefore alleged that Mrs Tucker produced, or caused to be submitted, a fraudulently produced training certificate for an ILS course.

It is alleged that Thornbury has since made various attempts to contact Mrs Tucker by telephone, text message and email on a variety of dates, but have not received any engagement from Mrs Tucker regarding the local investigation.

Mrs Tucker denies dishonesty and has since explained to the NMC that the certificate was mistakenly sent.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel considered the evidence adduced in this case together with the submissions made by Mr Maskell on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mrs Tucker.

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 oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Complaints and Incidents
Manager at Thornbury;
- Witness 2: Regulations Training and
Compliance Complaints and
Incidents Team Manager at
Thornbury;
- Witness 3: Resuscitation Service Manager at
Phillips Parade Training Centre;

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, which included reference to a number of relevant judgments. These included: *Re H* 1996 AC 563 2, *Wisson v HPC* 2013 EWHC 1036 3, *Lavis v NMC* 2014 EWHC 4083 4, *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* 2017 UKSC 5 and *Jenyo v GMC* 2016 EWHC 1708.

The panel considered the witness and documentary evidence provided by the NMC.

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

Charge 1

- 1) On 11 June 2019, produced and/or caused to be submitted to Thornbury Nursing Services an invalid training certificate for an Immediate Life Support Course.

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence given by Witness 2 and Witness 3. The panel also considered documentary evidence exhibited, which included the submitted ILS certificate dated 1 April 2019, the signing-in sheet for the ILS course dated 2 April 2019, an email from Mrs Tucker to Thornbury dated 11 June 2019 and emails from Mrs Tucker to the NMC dated 18 November 2020 and 9 November 2021.

The panel noted from Mrs Tucker's written responses to the NMC that she does not dispute that the ILS certificate she submitted on 11 June 2019 was invalid. Instead, Mrs Tucker explains that the ILS certificate was mistakenly sent to Thornbury. However, Mrs Tucker did not provide any explanation for this certificate having been altered nor a copy of a valid certificate. Although Mrs Tucker provides an explanation regarding her intent, the panel was of the view that Mrs Tucker's response, along with the email she

sent to Thornbury on 11 June 2019, both indicate that she caused the ILS certificate dated 1 April 2019 to be submitted to Thornbury.

The panel considered the oral evidence of Witness 3, which indicated that the ILS certificate submitted by Mrs Tucker on 11 June 2019, was not the same format or style as the ILS certificates awarded by the Resuscitation Board at the time. Further, the panel noted that Witness 3 exhibited a redacted copy of the signing-in sheet for the 2 April 2019 ILS course completed by all attendees, which Witness 3 confirmed did not show Mrs Tucker signed-in as an attendee. Witness 3 also told the panel that he had checked other courses around the same time and had not found Mrs Tucker signed in as attendee on any of them. Witness 3 also submitted a copy of the training record for a Helen Tucker held by his company, which did not show attendance at any recent ILS course. Witness 3 was asked if the certificate dated 1 April 2019 could have been issued as it appeared in the exhibit bundle, he advised this could not have happened as the certificates were populated using information from the training database and stored as pdf files. The panel determined that Witness 3's evidence was credible as his role and experience as Resuscitation Service Manager meant that he has a clear understanding of the ILS certificate that would have been awarded to Mrs Tucker in 2019, had she completed the course at the time.

The panel also considered the evidence of Witness 2. Witness 2 confirmed that it was his role at the time to validate certificates submitted to the agency, had considerable experience and had undertaken training in this area. The panel determined that Witness 2 provided clear and credible evidence indicating that the ILS certificate submitted by Mrs Tucker had some alteration to the last digit of the year, which appeared to be a small piece of paper stuck to the page with a handwritten nine. In his oral evidence, Witness 2 stated that this alteration was very clear to the naked eye, on zooming in the shadow of the paper could be seen and also obliterated a small portion of the adjacent number one. Witness 2 added that a review was carried out on Mrs Tucker's previous training evidence, and apart from the change to the date, the certificate was an exact match for a certificate she provided historically, dated 1 April 2014. Furthermore, in the photocopy sent on 11 June 2019 the bottom of the certificate was cut off, removing the date contained in the original certificate.

The panel was satisfied that there was clear mutually corroborative evidence to determine that the ILS certificate submitted by Mrs Tucker to Thornbury had been manually altered. The panel was satisfied that the certificate was not authentic and that Mrs Tucker did not attend the course on 1 April 2019, as no course had been run on that date.

Accordingly, the panel found charge 1 proved.

Charge 2

2) Your actions as set out in charge 1 were dishonest in that doing so you deliberately sought to represent that you had completed the Immediate Life Support Course when you knew that you had not.

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence given by Witness 2 and Witness 3. The panel also considered documentary evidence exhibited, which included an email from Mrs Tucker to Thornbury dated 12 June 2019, and emails from Mrs Tucker to the NMC dated 18 November 2020 and 9 November 2021. The panel applied the legal test for dishonesty and referred to the case of *Ivey v Genting Casinos*.

The panel had regard to its reasoning in charge 1, namely that Mrs Tucker caused an invalid ILS certificate to be submitted to Thornbury. It then went on to consider whether Mrs Tucker deliberately sought to mislead Thornbury.

The panel considered that both Witness 2 and Witness 3 were consistent in indicating that the ILS certificate submitted by Mrs Tucker was manually altered to change the date.

The panel noted the explanation provided by Mrs Tucker to the NMC, where she maintains that she had sent the ILS certificate to Thornbury by mistake. In an email to the NMC on 9 November 2021, Mrs Tucker states:

*'I have been in employment for the NHS for at least 30 years.
I have never been accused of dishonesty before. Indeed, openness and honesty are at the very core of Nursing. I have to say, why would I sabotage myself in such an obvious way?'*

In an email to the NMC on 18 November 2020, Mrs Tucker states:

'It was a genuine mistake when I sent the expired ILS certificate to Thornbury Nursing agency. I realise that this is what has gone wrong and I accept the blame for this misunderstanding. I should have contacted the agency and informed them them of the mistake.'

However, the panel also considered that it was not presented with any evidence indicating that Mrs Tucker had completed any other ILS course in 2019 or why the appearance of the certificate was altered. The panel was of the view that in these circumstances, a mistake is not a plausible explanation as the submitted certificate had been manually altered.

In addition, the panel noted that Mrs Tucker disengaged with Thornbury's local investigation. The panel noted that Thornbury made many attempts to contact Mrs Tucker and only succeeded on one occasion on 17 June 2019. The evidence from Witness 2 was:

'She informed me that she was getting in the car to pick up her daughter and was not able to speak. She requested that we call her back after 1600hrs. We called her back at this time, however she did not answer. This was the only occasion that anyone managed to speak to her, and there was no engagement from the Registrant with the investigation.'

The panel noted that Mrs Tucker has not provided an alternative version of events as to what she intended to submit. The panel considered that in the absence of any plausible explanation, Mrs Tucker sought to mislead Thornbury when she submitted the ILS certificate, as this was a requirement to remain registered with the agency.

The panel therefore finds charge 2 proved, and concluded in that, on the balance of probabilities, Mrs Tucker deliberately sought to represent that she had undertaken an ILS course when she submitted the invalid certificate. The panel was satisfied that by the standards of ordinary and decent people, this would be regarded as dishonest to submit or cause to be submitted a fraudulently produced training certificate.

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 Mrs Tucker's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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, Mrs Tucker's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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.'

In his submissions, Mr Maskell referred to the case of *Roylance v General Medical Council, Calhaem v GMC* [2007] EWHC 2006 (Admin) and *Mallon v General Medical Council* [2007] ScotCS CSIH 17.

Mr Maskell 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. He identified the specific, relevant standards where Mrs Tucker's actions amounted to misconduct.

Mr Maskell submitted that the charges found proved amount to misconduct as Mrs Tucker's actions were serious and fell below what would've been expected of a reasonable and competent nurse. He submitted that Mrs Tucker's actions demonstrate a departure from the professional standards required of a registered nurse in that she was dishonest about completing mandatory training.

Submissions on impairment

Mr Maskell 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 Maskell invited the panel to find Mrs Tucker's fitness to practise impaired on both public protection and public interest grounds. He submitted that Mrs Tucker's actions put others at an unwarranted risk of harm, as she failed to keep up to date with important, possibly life-saving training. He further submitted that Mrs Tucker's actions brought the profession into disrepute and contravened the expectation of a registered nurse behaving professionally, in that a registered nurse would be expected to keep up to date with mandatory training and also act with honesty and integrity.

Mr Maskell submitted that Mrs Tucker breached fundamental tenants of the profession. He submitted that although all actions of dishonesty are serious, being dishonest about completing mandatory training is particularly grave. He further submitted that public confidence in the profession would be undermined if impairment was not found in the case of a registered nurse who has been found to have doctored a training certificate and been dishonest about completing mandatory training.

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*, *Cohen v General Medical Council*, and *CHRE v NMC and Grant* [2011] EWHC 927.

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 Mrs Tucker's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Tucker's actions amounted to a breach of the Code. Specifically:

'6 Always practise in line with the best available evidence

To achieve this, you must:

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

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times treating people fairly and without discrimination, bullying or harassment'

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 Mrs Tucker's actions, particularly dishonesty, did fall seriously short of the conduct and standards expected of a nurse.

The panel considered that Mrs Tucker knew she was required to undertake mandatory training and deliberately sought to represent that she had done so by submitting a fraudulent certificate. The panel determined that Mrs Tucker's dishonesty was sufficiently serious to amount to misconduct as it was at the upper end of the spectrum. The dishonesty was premeditated and planned, in that some effort had gone into altering the submitted certificate. Mrs Tucker continued the dishonesty by following up the submission of the certificate with an email querying why it was not added to her record, and when she was alerted to concerns about the certificates validity she disengaged with the agency's investigation process. The panel was of the view that the dishonesty related directly to Mrs Tucker's clinical practice, and was intended to enable her to obtain work with the agency, therefore it was for personal financial gain.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 considered this test and found that all four limbs were engaged in this case. The panel finds that patients were put at unwarranted risk of harm as a result of Mrs Tucker's misconduct. Mrs Tucker's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel next went on to consider the matter of insight. The panel took into consideration Mrs Tucker's emails to the NMC providing an explanation of what she felt went wrong. The panel noted that Mrs Tucker explains that she sent the certificate by mistake, and in an email dated 25 November 2020, she stated:

'As I have previously stated I now have a filing system in place for my training certificates and I can assure you that I would act differently in the future to avoid a similar problem occurring'.

Further, in an email dated 9 November 2021 Mrs Tucker stated:

'Whilst I understand the importance of the investigation process, it has caused me a great deal of anxiety, stress and disbelief. I find myself in this terrible position through no fault of my own.'

The panel is of the view that whilst Mrs Tucker does acknowledge that the certificate should not have been sent, she has shown very limited insight into the act of submitting a fraudulent certificate in an attempt to represent that she had completed mandatory training. The panel is also of the view that there is no evidence of remorse.

The panel was satisfied that the misconduct in this case is capable of remediation, although it noted that the misconduct also relates to dishonesty, which is difficult to remediate. Therefore, the panel carefully considered the evidence before it in determining whether or not Mrs Tucker has remedied her practice. However, the panel determined that there was no evidence to indicate remediation.

The panel is of the view that due to the lack of insight, remorse or evidence of remediation, there remains a real risk of repetition of the concerns raised. The panel noted that Mrs Tucker failed to undertake necessary mandatory training but submitted that she had done so. The panel considered that there is a real risk of harm to the public if these concerns were repeated, as a registered nurse would be expected to keep up to date with mandatory training. 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.

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 where a nurse had acted dishonestly, in relation to her clinical practice for personal gain, and therefore also finds Mrs Tucker's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Tucker's fitness to practise is currently impaired on the grounds of both public protection and public interest.

Sanction

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

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 which included reference to a number of relevant judgments. These included: *Watters v NMC* [2017] EWHC 1888, *Lusinga v NMC* [2017] EWHC 1458, *Parkinson v NMC* [2010] EWHC 1898 and *Nooh v GMC* [2017] EWHC 2948.

Submissions on sanction

Before making his submissions, Mr Maskell advised the panel that he was still in the process of finding out Mrs Tucker's current position.

In order to afford Mr Maskell the opportunity to conduct further investigation, there was a short adjournment on the morning of 18 November 2021.

Mr Maskell later informed the panel that he had concluded his investigation and confirmed that Mrs Tucker is still employed at Morriston Hospital as a registered nurse. He explained that Mrs Tucker's employer has notified the NMC that she is currently on long term absence and has been since May 2021. Further, he explained that Mrs Tucker's employer informed the NMC that they are not aware of when Mrs Tucker will return back to work.

Mr Maskell also updated the panel on what has occurred since the referral. He advised the panel that there is now an outstanding NMC case against Mrs Tucker, a matter

which occurred on 29 September 2019 relating to her revalidation. He explained that the NMC is currently investigating incorrect/fraudulent entry allegations raised against Mrs Tucker during the revalidation process. He emphasised that this was not a finding of fact and that he gave the panel this information to prevent it from being inadvertently misled.

Mr Maskell referred the panel to the SG and submitted that the aggravating factors in this case include:

- Dishonesty
- Attitudinal and professionalism concerns
- Lack of engagement
- Failure to complete a mandatory annual course to ensure patient safety
- Lack of insight into failings.

Mr Maskell then moved onto the mitigating factors in this case, which he submitted to be:

- No clinical concerns
- No previous concerns
- Sole incident
- No actual harm.

Mr Maskell invited the panel to impose a striking-off order. He submitted that the concerns raised relate to an attitudinal issue, which is fundamentally incompatible with remaining on the register.

Decision and reasons on sanction

Having found Mrs Tucker's 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:

- Dishonesty
- Attitudinal concerns
- Lack of engagement
- Failure to complete mandatory annual course to ensure patient safety
- Lack of insight into failings
- Lack of remediation
- Lack of remorse
- Conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- No clinical concerns
- One-off single incident
- No previous concerns
- No actual harm caused to patients.

The panel acknowledged that Mrs Tucker currently has an outstanding NMC case, however, it determined to give little weight to this matter as the allegations are currently unproven.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. Further, the panel noted that Mrs Tucker is yet to remediate and to take no further action where the misconduct related to a failure to undertake necessary mandatory training and fraudulently submitting confirmation, would leave patients exposed to an unwarranted risk of harm. The panel decided that it would not protect the public or satisfy public interest to take no further action.

It then considered the imposition of a caution order, but again determined that a caution would do nothing to protect the public, nor would it satisfy the public interest in this case. 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 Mrs Tucker's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. 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 Mrs Tucker's registration would be a sufficient and appropriate response. The panel noted that there are no clinical concerns raised regarding Mrs Tucker's practice. The panel was of the view that there are no practical or workable conditions that could be formulated, given there are no clinical concerns and very limited engagement from Mrs Tucker. Furthermore, the panel concluded that the placing of conditions on Mrs Tucker's registration would not adequately address the seriousness of this case and would not protect the public, nor would it satisfy the public interest.

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;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*

- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

Mrs Tucker's actions, as highlighted by the facts found proved, were a significant departure from the standards expected of a registered nurse. The panel reached the view that Mrs Tucker's lack of insight, remorse and remediation was indicative of an attitudinal issue. The panel considered that Mrs Tucker's dishonesty related directly to her practice as a nurse, was deliberate and for personal financial gain, as without the mandatory training she would have been blocked from obtaining work from Thornbury. Additionally, the panel considered that with very limited engagement from Mrs Tucker, it has not been presented with any evidence that Mrs Tucker can return to practice without compromising patient safety. The panel noted that Mrs Tucker failed to engage with Thornbury when her deception was discovered and has had very limited engagement with the NMC's investigation. The panel noted that although Mrs Tucker initially stated that she had made an administrative '*mistake*', her most recent email to the NMC referred to her situation being '*no fault of my own*'. Without Mrs Tucker's engagement in this hearing the panel had no information before it that her attitude or behaviour was likely to improve. For these reasons, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. The panel was of the view that the serious breach of the fundamental tenets of the profession evidenced by Mrs Tucker's actions is fundamentally incompatible with Mrs Tucker remaining on the register.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

The panel noted that temporary removal from the register, although a significant sanction, given the circumstances of this case, and the relevant guidance, would not be sufficient to address public interest and uphold proper standards. The panel was of the view that the nature of the misconduct in this case is serious and fundamentally incompatible with the expectation that a reasonable member of the public would have of the standards expected of a registered nurse. The panel determined that in these circumstances, to allow Mrs Tucker to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel was of the view that a suspension order could be sufficient to protect the public where a registrant was willing to address their behaviour, however, Mrs Tucker has failed to demonstrate adequate insight and provided no evidence of remorse or remediation. Without any evidence or assurances from Mrs Tucker before the panel to suggest that her behaviour would be any different in the future the panel determined that the risk of repetition remained. Further, without the evidence mentioned above, the panel considered that the public interest would not be served by any lesser sanction than a striking-off order.

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

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

This will be confirmed to Mrs Tucker in writing.

Interim order

As the striking-off 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 Mrs Tucker's own interest until the striking-off 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 Maskell. He submitted that an interim order should be made on the grounds that it is necessary for the protection of the public and it is otherwise in the public interest.

Mr Maskell invited the panel to impose an interim suspension order for a period of 18 months.

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 due to allow for any possible appeal period.

If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after Mrs Tucker is sent the decision of this hearing in writing.

That concludes this determination.