

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Meeting 8 and 11 March 2022

Virtual Meeting

Name of registrant: Oghenetega Kivie

NMC PIN: 15I3108S

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – Level 1- September 2017

Area of registered address: Lanarkshire

Type of case: Misconduct and Lack of competence

Panel members: John Vellacott (Chair, Lay member)
Linda Tapson (Registrant member)
Seamus Magee (Lay member)

Legal Assessor: Oliver Wise

Hearings Coordinator: Xenia Menzl

Facts proved by admission: Charges 1a), b), c), d), f); 2b), c), d), f), g); 3 (in its entirety); 6a), b), c); 7a), b) i), b) ii), b) iii); and 9b)

Facts proved: Charges 1e), 2a), 2e), 4, 5, 7b) iv), 8, 9a) and 9c)

Facts not proved: None

Fitness to practise: Impaired

Sanction: **Conditions of practice order (18 months)**

Interim order: **Interim conditions of practice order (18 months)**

Decision and reasons on service of Notice of Meeting

The panel considered whether notice of this meeting has been served in accordance with the rules. Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules) state:

***11A.(1)** Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.*

***34.(3)** Any other notice or document to be served on a person under these Rules may be sent by—
(a) ordinary post'*

The panel accepted the advice of the legal assessor.

The letter of notice of this substantive meeting was sent to Miss Kivie and her representative at UNISON via email on 16 February 2022. The panel is satisfied that the notice was sent more than 28 days in advance of this meeting and to an email address that has been used by Miss Kivie to communicate with the Nursing and Midwifery Council (NMC). The panel therefore finds that notice has been served in accordance with the Rules.

The panel noted that some charges are not admitted by Miss Kivie in her latest communication with the NMC. The panel considered the case could still be dealt with at a meeting.

Details of charge

That you a Registered Nurse, between October 2017 and 16 July 2020:

1. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of workload management and prioritisation of tasks required to practise without supervision as a registered nurse, in that you:
 - a. On the week beginning 15 January 2018, failed to carry out multiple observations on patients **[proved by admission]**
 - b. On 15 April 2018, failed to show an understanding in relation to blood tests when treating a patient with an acute kidney injury **[proved by admission]**
 - c. On the week beginning 15 January 2018, failed to carry out NEWS observations in a timely manner **[proved by admission]**
 - d. On the week beginning 15 January 2018, failed to complete and totalise a fluid balance chart **[proved by admission]**
 - e. On 9 February 2018 were disorganised with your workload **[proved]**
 - f. On 28 April 2018, failed to check patient fluid balances **[proved by admission]**

2. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of identification and escalation of deteriorating patients required to practise without supervision as a registered nurse, in that you:
 - a. On the week beginning 15 January 2018, failed to carry out an assessment of a patient that was complaining of a new symptom **[proved]**
 - b. On the week beginning 15 January 2018, failed to demonstrate an understanding of how to deal with a hypotensive patient **[proved by admission]**
 - c. On the week beginning 15 January 2018, failed to carry out NEWS observations in a timely manner **[proved by admission]**
 - d. On 27 February 2018 failed to assess a patient who had declined breakfast and was feeling unwell, using the ABCDE assessment tool or NEWS score assessment tool, or at all **[proved by admission]**

- e. On 17 July.2018, failed to identify that Patient I's condition was deteriorating and required escalation **[proved]**
 - f. On 17 July 2018 failed to notice that a patient was prone and unresponsive with a NEWS score of 7 and had a palpable bladder **[proved by admission]**
 - g. On 18 July 2018, failed to identify that Patient J was suffering from urine retention and required escalation **[proved by admission]**
3. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of administration of medication required to practise without supervision as a registered nurse, in that you: **[proved by admission in its entirety]**
- a. On 18 January 2018 administered insulin to a patient without capacity, Patient A, and did not ask a colleague to carry out a second check
 - b. On 10 February 2018 failed to administer Amiodarone to Patient D
 - c. On 10 February 2018 failed to administer to an Exoparin injection to a patient
 - d. On 11 February 2018 failed to administer Amiodarone and Fresubin oral nutrition supplement to a patient
 - e. On 11 February 2018 failed to administer subcutaneous Clexane to Patient B on 3 consecutive days
 - f. On 11 February 2018:
 - i) withheld medication (Ramipril) in respect of Patient C,
 - ii) recorded on the Cardex for Patient C that a Doctor had instructed that the medication should not be administered
 - g. On 15 February 2018
 - i) were unaware of the maximum dosage of Paracetamol in a 24 hour period
 - ii) were unaware that dosage of specific medications require adjustment according to the patient's weight

- h. On 26 February 2018:
 - i) omitted to administer Warfarin to Patient E at the prescribed time
 - ii) having omitted to administer Warfarin to Patient E at the prescribed time, administered Warfarin at the incorrect time
 - iii) at the time that you administered the Warfarin to Patient E, you did so without supervision
 - i. On 27 February 2018 left medication unattended in a room where one of the patients was suffering periods of confusion
 - j. On 27 February 2018 attempted to administer insulin to Patient F without requesting that a colleague carry out a second check
 - k. On 18 July 2018 dispensed 1100 micrograms of medication to a patient when the prescription was for 800 micrograms
4. Your conduct as set out at charges 3.f.i) and 3.f.ii) above was dishonest in that you knew that a Doctor had not authorised withdrawal of Warfarin for Patient C
[proved]
5. Your conduct as set out at charge 3.j above was dishonest in that you were attempting to cover up your failure to administer Insulin at the directed time
[proved]
6. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of record keeping required to practise without supervision as a registered nurse, in that you: **[proved by admission in its entirety]**
- a. On 12 April 2018 failed to record in Patient G's notes whether you had administered Ticagrelor to the patient as prescribed
 - b. On 08 May 2018 failed to update Patient H's notes to show that a GTN infusion was no longer being administered
 - c. On 1 November 2018, in respect of Patient M, failed to record in the patient notes that Patient M had fallen while you were in the process of moving them

7. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of moving and handling required to practise without supervision as a registered nurse, in that you:
 - a. On a date unknown in October 2018, left Patient L unattended in a Sarah Steady device **[proved by admission]**
 - b. On 1 November 2018, in respect of Patient M, after installing the patient in the Sarah Steady device you,
 - i) Failed to ensure that Patient M was secured safely; and **[proved by admission]**
 - ii) As a result, Patient M fell from the Sarah Steady device **[proved by admission]**
 - iii) Delayed reporting that Patient M had fallen **[proved by admission]**
 - iv) Gave incorrect details regarding the circumstances of the fall **[proved]**
 - c. On 9 June 2020 you manually handled Patient N incorrectly and caused her injury **[proved by admission]**
8. Your conduct as set out at charges 6.c, 7.b.i), 7.b.ii) and 7.b.iii) was dishonest in that you sought to conceal your action of moving Patient M in an unsafe manner **[proved]**
9. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of communication required to practise without supervision as a registered nurse, in that you:
 - a. On a date unknown in October 2018, failed to give full discharge advice and instructions on the use of a catheter to Patient K **[proved]**
 - b. On 22 January 2018 failed to read the patient medical notes before completing a handover to colleagues **[proved by admission]**
 - c. On 11 May 2018, failed to communicate effectively with a colleague while preparing a patient for ambulance discharge **[proved]**

AND in light of the above, in respect of charge 4, 5 and 8 your fitness to practise is impaired by reason of your misconduct and in respect of charges 1, 2, 3, 6, 7 and 9 your fitness to practise is impaired by reason of your lack of competence.

Background

Miss Kivie first joined the NMC register in September 2017. She commenced employment at University Hospital Moorlands, as a newly qualified staff nurse in October 2017. She initially worked on Ward 18. Her induction included a one-week orientation and induction plus two weeks where she was supernumerary.

It is alleged that concerns regarding her practice began to emerge early in her employment. In February 2018 she was put on supervised practice. Despite support, Miss Kivie was placed on a formal capability programme in June 2018. As part of this, she was moved out of Ward 18 to Ward 12, which was a less acute area. She was assigned a mentor and provided with additional supervision, education and training as well as one hour per shift reflective practice time.

However, it was alleged that, despite this additional support, Miss Kivie failed to demonstrate the necessary competence as a newly qualified nurse on Ward 12 and no significant or consistent improvement was seen in her practice. Following further investigations into her practice she resigned from her employment.

Miss Kivie then gained employment with HC-One in August 2018 at the Highgate Care Home ('Home 1'). Shortly after joining, Miss Kivie's NMC registration became subject to an interim conditions of practice order. Home 1 facilitated Miss Kivie in working under those interim conditions.

In October 2018, Miss Kivie was involved in a manual handling incident in which she was allegedly responsible for a resident suffering a fall as a result of her incorrect use of a moving and handling device used to transfer a patient to a chair.

Then, in November 2018, Miss Kivie was involved in another similar manual handling incident. It is said she was responsible for a resident suffering a fall, as a result of the

incorrect use of the same device that was used in October 2018. When asked to give an account of this incident, it is alleged that Miss Kivie's initial account did not reflect the evidence of a witness who saw the resident on the floor. When questioned by her supervisor about the incident this raised concerns about Miss Kivie's probity.

Miss Kivie then secured employment at the Victoria House Care Home ('Home 2'), as a Health Care Assistant. The NMC requested an up to date reference, as part of their further investigation work and this resulted in an additional area of concern being raised. It is alleged that, on a night shift commencing 8 June 2020, Miss Kivie was involved in a moving and handling procedure that resulted in a hand injury to the resident. An investigation was planned by Home 2 but Miss Kivie left before it was completed.

Decision and reasons on facts

At the outset of the meeting, the panel noted the email from Miss Kivie, dated 21 July 2021, which states: *'I accept all charges.'*

However, the panel noted that the UNISON submissions, sent to the NMC in March 2022 on Miss Kivie's behalf, are not in alignment with the email of 21 July 2021. The panel determined that in these circumstances it would be fair to Miss Kivie to accept the latest documentation, dated March 2022, as Miss Kivie's position regarding the charges.

Therefore, in accordance with the documentation provided by UNISON, the panel finds charges 1a), b), c), d), f); 2b), c), d), f), g); 3 (in its entirety); 6a), b), c); 7a), b) i), b) ii), b) iii); and 9b) proved by way of Miss Kivie's admission.

However, charges 1e), 2a), 2e), 4, 5, 7b) iv), 8, 9a) and 9c) were not admitted in the submissions provided in March 2022. The panel therefore determined that it would be fair and in the interests of justice to make a decision on the facts which had not been admitted.

In reaching its decisions on the remaining facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC and from UNISON, on behalf of Miss Kivie.

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Nurse A: Senior Nurse of the Medical Directorate at University Hospital Monklands;
- Colleague B: Care Assistant at Highgate Care Home;
- Ms C: Home Manager at Highgate Care Home;
- Ms D: Care Home Manager at Victoria House Care Home;
- Colleague E: Carer at Victoria House Care Home;
- Colleague F: Senior Healthcare Assistant at Victoria House Care Home; and
- Ms G: Training Co-Ordinator at Victoria House Care Home.

The panel also had regard to written representations from Miss Kivie.

Charge 1e)

1. *Failed to demonstrate the standards of knowledge, skill, and judgement in respect of workload management and prioritisation of tasks required to practise without supervision as a registered nurse, in that you:*
 - e. *On 9 February 2018 were disorganised with your workload*

This charge is found proved.

In reaching this decision, the panel took into account the written statement of Nurse A and a Practice Development Support Report for Miss Kivie, dated 15 February 2018.

The panel noted that the Practice Development Support Practitioner reported Miss Kivie to be disorganised. In the Practice Development Support Report completed by the Practice Development Practitioner it states:

'I returned to Ward 18 on the 9th February 2018, to continue supporting [Miss Kivie]. [...] Following this period of observation, I found [Miss Kivie] to be disorganised with her workload as she attempted to carry out various tasks at the one time.'

The panel noted that the evidence demonstrated comments throughout that Miss Kivie was disorganised and that the Practice Development Practitioner's observation was in keeping with other evidence.

In her written statement to the NMC Nurse A stated:

'It came to light fairly quickly that [Miss Kivie] was struggling with the workload. [...] These concerns remained constant over the next few months.'

The panel further noted Miss Kivie's previous admission to the charge in the email dated 21 July 2021 and a previously submitted Case Management Form (CMF).

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie failed to demonstrate the standards of knowledge, skill, and judgement in respect of workload management and prioritisation of tasks required to practise without supervision as a registered nurse, in that on 9 February 2018 she was disorganised with her workload.

Charge 2a)

2. *Failed to demonstrate the standards of knowledge, skill, and judgement in respect of identification and escalation of deteriorating patients required to practise without supervision as a registered nurse, in that you:*
 - a. *On the week beginning 15 January 2018, failed to carry out an assessment of a patient that was complaining of a new symptom*

This charge is found proved.

In reaching this decision, the panel took into account the Supervisory Discussion Notes, and a Practice Development Support Report for Miss Kivie, dated 15 February 2018.

The Practice Development Support Report states that:

‘On the week commencing the 15th January 2018 [...] On the second visit, the same week [...]

During this period, there were 2 incidences of questionable practice. One of which involved failure to address patient centred care where the patient was complaining of a new symptom. William coached [Miss Kivie] into how this incident should be approached which included medical staff involvement/review.’

The notes of the Supervisory Discussion on the 17 July 2018 state:

‘Before break I asked [Miss Kivie] if there were any concerns with our patients she said no. I then took over in the room where she had been working, I noticed immediately that a patient was unresponsive lying flat in the bed, observations checked – News 7, Dr informed, IC fluids commenced, bloods taken, no urine

passed, palpable bladder. When [Miss Kivie] returned to ward I asked her why no information had been passed to myself, she informed me the patient was unable to take breakfast, she had no observation of the ill patient'

The panel further noted Miss Kivie's previous admissions to the charge.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie failed to demonstrate the standards of knowledge, skill, and judgement in respect of identification and escalation of deteriorating patients required to practise without supervision as a registered nurse, in that, on the week beginning 15 January 2018, she failed to carry out an assessment of a patient that was complaining of a new symptom.

Charge 4)

4. Your conduct as set out at charges 3.f.i) and 3.f.ii) above was dishonest in that you knew that a Doctor had not authorised withdrawal of Warfarin for Patient C

This charge is found proved.

In reaching this decision, the panel took into account Miss Kivie's admissions to charges 3.f.i) and 3.f.ii), the notes of a meeting between Miss Kivie, Nurse H and Nurse J and a Datix detailing the incidents in charge 3.f.i) and 3.f.ii).

The panel noted that Miss Kivie admits charges 3.f.i) and 3.f.ii) which go to the core of charge 4, as well as the evidence, the Datix and the meeting notes, outlining the incident.

The Datix for this incident states:

'SN withheld a patient's medication without discussing it with medical staff while signing the cardex as (9) withheld on Dr's instructions'

The meeting note states:

'[Miss Kivie] has undergone a series of supervised drug administration rounds, however when administering drugs independently the following omissions of care have occurred:

- *A decision to withhold ramipril from a patient and then documenting (9) on the medicine cardex as being withheld on instruction from medical staff. [Miss Kivie] clearly failed understand the correct process and the abbreviations to be used.' [sic]*

The panel was of the view that Miss Kivie withheld information admitting that she signed the cardex for Patient C without discussing this with a medical practitioner, when she had not. The panel determined that it was more likely than not a deliberate act of dishonesty to conceal that she had withheld medication for Patient C and to divert responsibility away from herself.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie's conduct as set out at charges 3.f.i) and 3.f.ii) was dishonest in that she knew that a Doctor had not authorised withdrawal of Warfarin for Patient C.

Charge 5)

5. *Your conduct as set out at charge 3.j above was dishonest in that you were attempting to cover up your failure to administer Insulin at the directed time*

This charge is found proved.

In reaching this decision, the panel took into account Miss Kivie's admissions to charge 3j), and her reflection on the incident.

The panel noted that Miss Kivie admits charges 3j) which goes to the core of charge 5.

The panel noted that in her written reflection on the incident Miss Kivie states:

'I administered the insulin without asking a colleague to double check in adherence to the NMC management of Medicines (2008). Thereby, I did not ensure patient safety in adherence to the NMC Code (2015) which 19.1 says as a Registered Nurse measures should be taken to reduce as far as possible the likelihood of mistakes, near misses, harm and the effect of harm if it takes place. In addition, the patient cannot give consent because she is an Adult with Incapacity (Adults with Incapacity (Scotland) Act (2000)), thereby needs two Registered Nurses to check the insulin and sign before administration. This is in adherence to the Legal and Ethical frameworks for Patient Group Direction for Standards for Medicine Management (2006).'

The panel determined that Miss Kivie was under a high amount of pressure due to her situation and that she was already under supervision regarding her medicines management. The panel deduced that it was highly likely that Miss Kivie attempted to administer insulin without a second checker to cover up the fact that she had missed the directed time.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie's conduct as set out at charge 3.j above was dishonest in that she was attempting to cover up her failure to administer Insulin at the directed time

Charge 8)

8. Your conduct as set out at charges 6.c, 7.b.i), 7.b.ii) and 7.b.iii) was dishonest in that you sought to conceal your action of moving Patient M in an unsafe manner

This charge is found proved.

In reaching this decision, the panel took into account of Miss Kivie's admissions with regard to charges 6.c, 7.b.i), 7.b.ii) and 7.b.iii), and Ms C's written statement to the NMC which states:

'About 4pm on -1 November 2018, I was working at Highgate when I was approached by [Miss Kivie] and she told me that a resident had had a controlled fall in the morning. I should add that we have a meeting at 11.30am every morning and one of the matters that is discussed is if any residents have suffered a fall and if the relevant accident forms have been completed. [Miss Kivie] was present at this meeting and she never mentioned anything about any resident having had a fall.

[Miss Kivie] went on to explain that the resident involved had had a controlled fall out of the 'steady' and she asked me if she needed to complete any accident forms. A controlled fall is when you use your body to support a patient if they are falling or unsteady in order to prevent them from falling and injuring themselves. When [Miss Kivie] explained to me what had happened I didn't quite believe what she was saying as it didn't seem to make sense. I also asked her to complete an accident form and update the relevant care notes.

[...]

In the accident form, [Miss Kivie] recorded the time of the incident as 10:30am.

[...]

In the daily record of care notes, [Miss Kivie] I had completed an entry at 11:35am but had made no mention of the fall. At some later time, she has put an online entry stating only that the resident had had a controlled fall. She should have provided a detailed description of the incident and what she put was unacceptable. She also had the opportunity to record this incident when she completed the entry at 11.35am.

[...]

As I was concerned that [Miss Kivie] was not being completely truthful about what had happened, the following morning I spoke to the carer who was also involved in the care of the resident. She explained to me that she had walked into the resident's room and found her lying on the floor, half in her room and half in her en-suite bathroom. [Miss Kivie] had earlier said that the fall had happened as she was trying to get her out of bed.

[...]

I spoke to [Miss Kivie] later that afternoon. I asked her to explain again what had happened and to try and demonstrate what she actually did. She did this but when I

told her that the resident had been found by the carer lying on the floor, she began to tie herself in knots and then admitted what had actually happened.'

The panel also noted that there was no record of a fall or any subsequent observations in the documentation before it. It noted that Miss Kivie was under the 'spotlight' and most likely was worried about making a mistake. The panel concluded that it was likely that Miss Kivie panicked and tried to hide the fact that the resident had fallen. The panel therefore deduced that Miss Kivie tried to conceal that the resident had fallen as a result of her trying to move the resident in an unsafe manner.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that the conduct as set out at charges 6.c, 7.b.i), 7.b.ii) and 7.b.iii) was dishonest in that she sought to conceal her action of moving Patient M in an unsafe manner.

Charge 9a)

9. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of communication required to practise without supervision as a registered nurse, in that you:
 - a) On a date unknown in October 2018, failed to give full discharge advice and instructions on the use of a catheter to Patient K

This charge is found proved.

In reaching this decision, the panel took into account Nurse A's written statement, the Catheter care reflection piece and Miss Kivie's CMF.

The panel noted Nurse A's written statement, which explains:

'A concern that [Miss Kivie] had failed to properly explain the use of a catheter to a patient who was being discharged from hospital. He had been discharged with a urethral catheter and [Miss Kivie] had responsibility to explain how to properly use it. It was assessed by the mentor that the explanation given by [Miss Kivie] was not of an adequate level.'

Miss Kivie confirms this in her catheter care reflection piece, in which she states:

'Despite this, a referral was made to the District Nurse who would be contacted if any issues occur. Hence, the writer thinks that the quality of the teaching was not good enough as the exclusion of hypothetical problematic scenarios of self-managing catheters might have an adverse impact and result in problems at home.'

The panel also noted that Miss Kivie admitted this charge in an earlier submitted CMF.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie failed to demonstrate the standards of knowledge, skill, and judgement in respect of communication required to practise without supervision as a registered nurse, in that, on an unknown date in October 2018, she failed to give full discharge advice and instructions on the use of a catheter to Patient K.

Charge 9c)

9. Failed to demonstrate the standards of knowledge, skill, and judgement in respect of communication required to practise without supervision as a registered nurse, in that you:

- c. On 11 May 2018, failed to communicate effectively with a colleague while preparing a patient for ambulance discharge

This charge is found proved.

In reaching this decision, the panel took into account Nurse A's written statement, Miss Kivie's written reflection on the event dated 11 May 2018 and the CMF.

In her written statement Nurse A refers to an incident on 11 May 2018:

'On 11/05/2018, a concern that [Miss Kivie] failed to communicate effectively with a colleague whilst preparing a patient for an ambulance discharge from hospital.'

In her written reflection regarding the event Miss Kivie states:

'Communication and delegation of tasks to team member is an effective collaboration of team working. Due to not finding my colleague, I decided to help the patient with packing of his belongings instead of waiting on my colleague with no idea how long she might take. [...]

After my colleague expressed her opinion, I understood her perspective but I did not explain myself so she understood mine. Effective communication which is listening and clearly expressing oneself in a professional manner within a team helps to deliver care effectively to meet the needs of the patients. This in turn maintains the high quality of care the patient receives because of the professional approach while working with other people when there is a slight misunderstanding by working on and seeing pass the misunderstanding to deliver the care required. [...]

I could have explained myself clearly while began helping the patient and later delegated the task to her. In addition, I could have apologised for annoying her.'

[sic]

Miss Kivie also admitted this charge previously in her CMF.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not that Miss Kivie failed to demonstrate the standards of knowledge, skill, and judgement in respect of communication required to practise without supervision as a registered nurse, in that, on 11 May 2018, she failed to communicate effectively with a colleague while preparing a patient for ambulance discharge.

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 or to a lack of competence, and, if so, whether Miss Kivie'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 or lack of competence. Secondly, only if the facts found proved amount to misconduct or lack of competence, the panel must decide whether, in all the circumstances, Miss Kivie's fitness to practise is currently impaired as a result of that misconduct or lack of competence.

Representations on misconduct

The NMC 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.

The NMC identified the specific, relevant standards where Miss Kivie's actions amounted to misconduct. It was submitted that the misconduct is serious as it involves wide ranging failings in respect of basic and fundamental aspects of nursing. In relation to charges 4, 5 and 8, which involve dishonesty related to Miss Kivie's work as a registered nurse and in connection with patient care. It was submitted that Miss Kivie's actions had a potential for serious and unwarranted patient harm and to undermine the trust and confidence in the profession.

Representations on lack of competence

The NMC has defined a lack of competence as:

'A lack of knowledge, skill or judgment of such a nature that the registrant is unfit to practise safely and effectively in any field in which the registrant claims to be qualified or seeks to practice.'

The NMC invited the panel to take the view that the facts found proved amount to a lack of competence. The panel had regard to the terms of the Code in making its decision.

The NMC identified the specific, relevant standards where Miss Kivie's actions amounted to a lack of competence. A lack of competence needs to be assessed using a three stage process:

- Is there evidence that Miss Kivie was made aware of the issues around her competence?
- Is there evidence that she was given the opportunity to improve?
- Is there evidence of further assessment?

The NMC invited the panel to find that the facts found proved show that Miss Kivie's competence at the time was below the standard expected of a band 5 registered nurse.

The NMC submitted that Miss Kivie was a newly qualified nurse. It is submitted that Miss Kivie failed to demonstrate the standards of knowledge, skill and judgement required to practise in relation to a wide range of areas and without supervision. The concerns relating to a lack of competence all had the potential for serious, unwarranted, patient harm. The wide- ranging areas of concern, as reflected in regulatory concerns above, relate to fundamental and basic areas of nursing.

The panel noted that UNISON did not make direct submissions with regard to lack of competence or impairment. However, the panel noted that Miss Kivie accepted in her CMF that her fitness was impaired by reason of her misconduct.

Representations on impairment

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel was referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Miss Kivie's fitness to practise impaired on the grounds that Miss Kivie has displayed limited and developing insight into her failings and has addressed some of the concerns by undertaking further training. It is submitted that there is a continuing risk to the public as Miss Kivie has not had the opportunity to demonstrate her strengthened practice through recent work in a relevant area. The concerns are wide ranging, serious and not isolated and the training undertaken does not all post-date the areas of concern. Whilst Miss Kivie made some admissions she has not yet demonstrated full insight or remediated the regulatory concerns.

Further, it is submitted that there is a public interest that a finding of impairment is made in the public interest to declare and uphold proper standards of conduct and behaviour.

The panel noted that UNISON did not make direct submissions with regard to impairment.

Decision and reasons on misconduct

The panel accepted the advice of the legal assessor, who advised that a breach of professional duty must be serious if it is to amount to 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 Miss Kivie's actions did fall significantly short of the standards expected of a registered nurse, and that Miss Kivie's actions amounted to a breach of the Code. Specifically:

'10 Keep clear and accurate records relevant to your practice

To achieve this you must:

- 10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*
- 10.3 complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

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, [...]*
- 20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people*
- 20.8 act as a role model of professional behaviour for students and newly qualified nurses to aspire to'*

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 the failings in this case were wide ranging and related to fundamental aspects of nursing. Further, the panel noted that charges 4, 5 and 8 related to dishonesty in the clinical context of Miss Kivie's practice. It was of the view that dishonesty is serious misconduct.

The panel found that Miss Kivie's failings and dishonesty did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on lack of competence

The legal assessor advised the panel to have regard to the guidance in *Holton v General Medical Council* [2006] EWHC 2960 Admin.

When determining whether the facts found proved amount to a lack of competence, the panel had regard to the terms of the Code. In particular, the following standards:

'1 Treat people as individuals and uphold their dignity

To achieve this you must:

- 1.2 *make sure you deliver the fundamentals of care effectively*
- 1.4 *make sure that any treatment, assistance and care for which you are responsible is delivered without undue delay*

2 Listen to people and respond to their preferences and concerns

To achieve this you must:

- 2.1 *work in partnership with people who deliver care effectively*

4 Act in the best interests of people at all time

To achieve this you must:

- 4.2 *make sure that you get properly informed consent and document it before carrying out any action*

6 Always practise in line with the best available evidence

To achieve this you must:

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

7 Communicate clearly

To achieve this you must:

- 7.3 *use a range of verbal and non- verbal communication methods, and consider cultural sensitivities, to better understand and respond to people's personal and health needs.*

8 Work cooperatively

To achieve this you must:

- 8.2 *maintain effective communication with colleagues*
- 8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*
- 8.4 *work with colleagues to evaluate the quality of your work and that of the team*
- 8.5 *work with colleagues to preserve the safety of those receiving care*
- 8.6 *share information to identify and reduce risk*

10 Keep clear and accurate records relevant to your practice

To achieve this you must:

- 10.1 *complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event*
- 10.2 *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*
- 10.3 *complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

13 Recognise and work within the limits of your competence

To achieve this you must:

- 13.1 *accurately assess signs of normal or worsening physical and mental health in the person receiving care*
- 13.2 *make a timely and appropriate referral to another practitioner when it is in the best interests of the individual needing any action, care or treatment*
- 13.3 *ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*
- 13.5 *complete the necessary training before carrying out a new role*

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

To achieve this you must:

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

16.4 *acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so*

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this you must:

18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*

18.4 *take all steps to keep medicines stored securely*

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*

19.3 *keep to and promote recommended practice in relation to controlling and preventing infection*

19.4 *take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public*

22 Fulfil all registration requirements

To achieve this you must:

22.3 *keep your knowledge and skills up to date, taking part in appropriate and regular learning and professional development activities that aim*

to maintain and develop your competence and improve your performance.'

The panel bore in mind, when reaching its decision, that Miss Kivie should be judged by the standards of a reasonably competent registered nurse and not by any higher or more demanding standard. The panel acknowledged that Miss Kivie was newly qualified at the time of the failings in 2018 but that efforts were made by her employer to improve her practice. However, the panel noted that Miss Kivie failed to demonstrate the required standard in the basic and fundamental elements of nursing care despite the wide ranging and significant support from her employers.

Taking into account the reasons given by the panel for the findings of the facts, the panel has concluded that Miss Kivie's practice was below the standard that one would expect of the average registered nurse acting in Miss Kivie's role.

In all the circumstances, the panel determined that Miss Kivie's performance demonstrated a lack of competence.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and lack of competence, Miss Kivie'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 found that all four limbs of *Grant* are engaged. Patients were put at a real risk of harm and a patient was caused physical harm.

Regarding insight, the panel considered that Miss Kivie had not fully explored the impact of her failings on the patients nor has she expressed empathy. The panel was of the view that she has only demonstrated some remorse in her reflections. Miss Kivie has not considered the impact of her actions in her colleagues and the wider reputation of the profession. Whilst the panel appreciates that Miss Kivie was newly qualified around the

time of her failings, she should be able to fully reflect whilst being in and out of nursing practice. The panel also noted that whilst Miss Kivie had ample support to strengthen her practice, she stated that she was not fully supported by her employer. The panel was therefore of the view that Miss Kivie has only demonstrated limited insight into her failings.

The panel noted that Miss Kivie had significant support in various areas and with several employers throughout the time of her failings. However, the panel was satisfied that despite this, the misconduct and lack of competence in this case is capable of being addressed.

The panel determined that the dishonesty in his case was more difficult to remediate. Therefore, the panel carefully considered the evidence before it in determining whether or not Miss Kivie has taken steps to strengthen her practice. The panel noted the training certificates submitted on Miss Kivie's behalf and was of the view that whilst Miss Kivie has furthered and strengthened her knowledge in some areas of concern, she has not been able to demonstrate this in her practice. The panel was therefore of the view that Miss Kivie had not yet remediated her practice.

Therefore, the panel is of the view that there is a risk of repetition based on the limited insight and the lack of remediation. 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 and therefore also finds Miss Kivie's fitness to practise impaired on the grounds of public interest.

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

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 18 months. The effect of this order is that Miss Kivie's name on the NMC register will show that she is subject to a conditions of practice order and anyone who enquires about her registration will be informed of this order.

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

Representations on sanction

The panel noted that the NMC invited the panel to impose a conditions of practice order for a period of 12 months. The NMC outlined the aggravating and the mitigating factors of this case and submitted that due to the potential for patient harm and the concerns being directly linked to Miss Kivie's role as a nurse, some form of restriction is required. It is submitted that many of the concerns in the case are directly linked to Miss Kivie's competence as a nurse, and those clinical concerns are capable of remediation. It is submitted that a conditions of practice order would serve so as to appropriately restrict Miss Kivie's practice and allow her to demonstrate that the clinical and other concerns have been remediated in a safe and structured way.

The panel also bore in mind UNISON's submissions on Miss Kivie's behalf. The submissions outline Miss Kivie's personal circumstances and her wish to return to nursing. It is submitted that in the circumstances a conditions of practice order would be sufficient to address the core regulatory competency concerns and protect the public. It is submitted that 24 months of a conditions of practice order would enable Miss Kivie to include a return to practice course as part of her rehabilitation.

Decision and reasons on sanction

Having found Miss Kivie'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:

- Wide ranging concerns in respect of basic areas of nursing;
- The concerns persisted despite extensive support provided over a prolonged period of time by several employers;
- The concerns were not isolated,
- Real risk of harm to patients and some actual harm to patients; and
- Dishonesty regarding clinical practice.

The panel also took into account the following mitigating features:

- Miss Kivie was a newly qualified nurse in a busy stressful environment;
- Some developing insight and acknowledgement of her shortcomings; and
- Admissions to a majority of the charges.

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 Miss Kivie'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 Miss Kivie's 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 Miss Kivie's 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;*
- *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 determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Miss Kivie would be willing to comply with conditions of practice.

The finding of dishonesty raises the question of a more severe sanction than a conditions of practice order. Whilst dishonesty can never be justified, the panel accepted the evidence provided by Occupational Health, that Miss Kivie was [PRIVATE]. It noted Nurse A's statement:

'She [Miss Kivie] had also claimed that she [PRIVATE] and that this could impact on her ability to carry out drug administration duties.'

The panel further considered that Miss Kivie was in the very early stages of her clinical practice. Hence, the panel determined that it was more likely than not, that Miss Kivie's dishonesty was born out of [PRIVATE], as opposed to being attitudinal in character. The panel concluded that this could have impacted on her ability to think clearly about the implications of her actions.

The panel took into account that the clinical failings were capable of remediation, that the majority of the events took place in 2018 and that Miss Kivie has not had a chance to put

her further training into practice as of yet. The panel was therefore of the view that a suspension order would be disproportionate at this point in time.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must ensure that you are supervised by a registered nurse any time you are working. Your supervision must consist of working at all times while being directly observed until signed off by your line manager, supervisor, mentor or deputy as competent.
2. You must work with your line manager, supervisor, mentor or deputy to create a personal development plan (PDP).

Your PDP must address the concerns about

- General nursing duties, in particular organisation of workload – prioritisation;
- Identification & escalation of the deteriorating patient;
- Administration of medication;
- Record keeping – in particular, report writing;
- Using a mobility aid without securing a patient, causing the patient to fall;
- Duty of candour; and
- Rough and inappropriate handling of a resident resulting in injury.

You must:

- a) Send your case officer a copy of your PDP prior to any review.
- b) Send your case officer a report from your line manager, supervisor, mentor or deputy prior to any review. This report must show your progress towards achieving the aims set out in your PDP.

3. You must keep a reflective practice profile. The profile will:

- a) Provide details where you undertake or assist with care in relation to the regulatory concerns as listed above in condition 2.
- b) Set out the nature of the care given.
- c) Be signed by your line manager, supervisor, mentor or deputy each time.
- d) Contain feedback from your line manager, supervisor, mentor or deputy on how you gave the care.

You must send your case officer a copy of the profile prior to any review.

4. You must keep us informed about anywhere you are working by:

- a) Telling your case officer within seven days of accepting or leaving any employment.
- b) Giving your case officer your employer's contact details.

5. You must keep us informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
- b) Giving your case officer the name and contact details of the organisation offering that course of study.

6. You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.
- b) Any agency you apply to or are registered with for work.
- c) Any employers you apply to for work (at the time of application).
- d) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
- e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity

7. You must tell your case officer, within seven days of your becoming aware of:
 - a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

8. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
 - a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions.

The period of this order is for 18 months.

Before the end of the period of the order, a panel will hold a review hearing to see how well Miss Kivie has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Miss Kivie's attendance at the review hearing;
- An up to date detailed reflective piece drafted with the assistance of a model such as Gibbs (examples of which can be found on the NMC website) addressing the regulatory concerns and the impact of the concerns on patients, colleagues and the reputation of the profession;
- Evidence of up to date training; and
- Current testimonials and references from any paid and unpaid work.

This will be confirmed to Miss Kivie in writing.

Interim order

As the conditions of practice 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 Miss Kivie's own interest until the conditions of practice sanction takes effect.

Representations on interim order

The panel took account of the representations made by the NMC that if a finding is made that Miss Kivie's fitness to practise is impaired on a public protection basis and a restrictive sanction imposed, an interim order in the same terms as the substantive order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest.

The panel noted that UNISON did not make submission regarding an interim order.

Decision and reasons on interim order

The panel accepted the advice of the legal assessor.

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 the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months, to allow for the possibility of an appeal to be made and determined.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Miss Kivie is sent the decision of this hearing in writing.

That concludes this determination.