

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

**Substantive Hearing
Thursday 7 – Thursday 14 April 2022**

Virtual Hearing

Name of registrant:	Georgina Ruth Parry
NMC PIN:	91Y0616E
Part(s) of the register:	Registered Nurse – Sub Part 1
Area of registered address:	Cornwall
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, lay member) Michael Duque (Registrant member) James Kellock (Lay member)
Legal Assessor:	Andrew Young
Hearings Coordinator:	Catherine Acevedo
Nursing and Midwifery Council:	Represented by Sophia Kerridge, Case Presenter
Mrs Parry	Present and represented by Mary-Teresa Deignan, Counsel instructed by the Royal College of Nursing (RCN)
Facts proved:	Charges 1
Facts not proved:	Charges 2, 3 and 4
Fitness to practise:	Impaired
Sanction:	Conditions of practice order – 12 months
Interim order:	Interim conditions of practice order - 18 months

Details of charge

That you, a registered nurse, while employed as a Deputy Manager:

1. On one or more occasions between approximately May 2020 and 21 August 2020 slept on duty.
2. On one or more occasions between approximately May 2020 and 21 August 2020 permitted staff to sleep on duty.
3. On an unknown date asked one or more colleagues not to report that you had slept on duty in exchange for not reporting them.
4. Your actions at charge 3 above showed a lack of integrity in that you used your position of seniority over colleagues for your own benefit

And, by the reason of the above, your fitness to practise is impaired by reason of your misconduct.

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

At the outset of the hearing, Ms Kerridge made a request that parts of this hearing be held in private on the basis that proper exploration of your case may involve reference to your health and the health of a third party. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Deignan on your behalf indicated that she was aware of the matter and had no observations on the application.

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

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

Having heard that there may be reference to your health or the health of a third party, the panel determined to hold those parts of the hearing in private.

Application on disputed redactions

Rule 18(7) of NMC Fitness to Practice Rules 2004 states that:

...decisions as to whether or not any evidence is to be admitted at the hearing shall be taken by the Committee considering the allegation

In these circumstances, the panel, as adjudicators of law and fact, will need to see the material they are being asked to make a decision on so it can inform the decision that they make. This is in accordance with *Thorneycroft v NMC* [2014] EWHC 1565 (Admin):

“[46]... The Panel may take advice from the Legal Assessor on the admissibility of evidence, the procedures to be followed and the approach to their substantive decision. However, at every stage of the proceedings the Panel are the judges both of the law and the facts (see Libman v GMC (1972) AC 217). Decisions as to the admissibility of evidence are therefore for the Panel, not the Legal Advisor.

[47]... to reach an informed decision as to the admissibility of evidence the Panel needed to be given the necessary materials.”

The following redactions proposed by Ms Deignan on your behalf were disputed by the NMC and as such the panel was invited to consider them.

Ms Deignan proposed redactions to paragraph nine of Ms 1’s witness statement:

- Sentence 1 – Inadmissible because it is anonymous hearsay.

- Sentence 3 – Inadmissible because it is anonymous hearsay.
- Sentence 5 - Inadmissible because at least the original source is anonymous and multiple anonymous hearsay.
- Sentence 6 - inadmissible because it does not go to a charge faced by you and is prejudicial.
- Sentence 7 and final sentence – inadmissible because it does not go to a charge faced by you and is irrelevant prejudicial.

Ms Deignan proposed redactions to the document HT/04 exhibited by Ms 1:

- Redact Ms 2 document as per AP/01 – inadmissible as it is unfair and prejudicial. This witness has not been called to give evidence and as a consequence cannot be challenged.
- HT/04: Redact Ms 3 document as per TW/01 - inadmissible as it is unfair and prejudicial. This witness has not been called to give evidence and as a consequence cannot be challenged.
- HT/04: exhibit bundle p10 – redaction of Ms 2's email - inadmissible because it does not go to a charge and is prejudicial.

In relation to paragraph 9 of Ms 1's witness statement, Ms Kerridge submitted that this is not prejudicial, rather it is important explanatory evidence as to how the local investigation came to start. She submitted that hearsay is admissible since it is not the sole or decisive evidence and the panel should place limited weight if any on this evidence. She submitted that the evidence is not prejudicial to you but provides context and should be admitted.

In relation to document HT/04, Ms Kerridge submitted that the hearsay in document TW/01 and AP/01 which refers to other named individuals who are not being called as witnesses, is admissible as this is not the sole or decisive evidence and the panel can apply the weight it sees fit.

In relation to the disputed sentence in Ms 2's email in HT/04, Ms Kerridge submitted that this is relevant to the matters the panel has to determine, including your attitude to your professional responsibilities and should be admitted.

The panel heard and accepted the advice of the legal assessor.

In relation to paragraph 9 of Ms 1's witness statement the panel admitted all sentences apart from sentence 3. The panel determined that sentences 1, 5, 6 and 7 provided context and were not prejudicial to you to admit. The panel found sentence 3 to be a vague assertion and was prejudicial to you as there was no explanation as to the source of the information. It therefore did not admit sentence 3.

In relation to the disputed sentence in Ms 2's email, the panel considered that it does not go to a charge and is prejudicial. The panel therefore determined that it should not be admitted.

In relation to document HT/04, and the hearsay in document TW/01 and AP/01, the panel considered that although this is hearsay it is not the sole or decisive evidence relevant to any charge and is not prejudicial. The panel therefore determined that this evidence should be admitted.

Decision and reasons on application to admit the written evidence of Ms 4 and attributed documentary evidence.

The panel heard an application made by Ms Kerridge under Rule 31 to allow the written statement of Ms 4 into evidence. Ms 4 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend today due to her having to attend an appointment [PRIVATE]. Ms Kerridge submitted that the NMC contacted Ms 4 to enquire whether arrangements could be made to facilitate her giving evidence. However, she contacted the NMC on the day before the hearing on 6 April 2022, [PRIVATE]. She also stated "*So I am sending you this EMAIL*

saying I [Ms 4] will be retracting my statement. Date 6-4- 2022. Please don't message or EMAIL me anymore".

Mr Kerridge submitted that Ms 4's retraction is not linked to the truthfulness of her statement [PRIVATE]. She submitted that Ms 4 has a very good reason for not being able to attend the hearing. She submitted that Ms 4's evidence is relevant to charge 1 and provides context to charge 2. She submitted that Ms 4's evidence is not sole and decisive in relation to those charges and it would be fair for the panel to admit her evidence and the panel can decide what weight they attach to her evidence.

Ms Deignan referred the panel to the NMC telephone note of a conversation with Ms 4 dated 28 May 2021. She submitted that it is meant to be an accurate record of what was said and for purposes of this application it can be relied upon. Ms Deignan submitted that Ms 4 is the only witness who speaks to charges 1 and 2 and so her evidence is sole and decisive. Ms 4 has disengaged from the process, she is not a willing witness and she has said she wants to retract her statement. Ms Deignan submitted that it would be fundamentally unfair to accept the witness statement and exhibits of Ms 4.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel took into account that Ms 4 is no longer willing to support the case and has indicated that she wished to 'retract' her statement. The panel noted that there were inconsistencies in her various accounts in respect of the number of times she had witnessed you allegedly sleeping. The panel considered that Ms 4 is the only person that gives evidence in respect of some aspects of the charges which now cannot be challenged. The panel therefore determined that it would be unfair to admit Ms 4's statement and exhibits.

The panel therefore refused the application.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Kerridge and by Ms Deignan. The panel particularly noted Ms Deignan's oral and written submissions as to the need for caution before reaching conclusions as to the credibility and reliability of witnesses.

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

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Ms 1: Home Manager and Matron at the Home;
- Ms 2: Care Assistant at the Home.
- Ms 3: Care Assistant at the Home;

The panel also heard evidence from you under affirmation.

Background

The charges arose when you were employed at the Asheborough House Care Centre ('the Home'). You started your employment there as a staff nurse on 1 September 2016. You became Deputy Manager and Deputy Matron in April 2018.

The Home has capacity for 31 residents, but during the Covid pandemic there were 28 beds in use. All residents had some form of dementia and most lacked mental capacity.

During day shifts there would be at least one nurse and eight carers on duty. During a night shift there would be one nurse and three carers, with an additional carer for the twilight hours. Staff were required to be awake at all times when they worked at the Care Home, including the night shift.

A carer who often worked the night shift with you, described regularly seeing you allegedly asleep while on duty including in residents rooms.

You were also allegedly seen on one occasion during a night shift by another carer, to be lying asleep on the sofa in the Home lounge with the lights off, feet up and a face mask on. The carer also described overhearing you tell other members of staff not to report her and that in exchange you would not report them for sleeping while on duty.

Both witnesses stated that they would spend a considerable amount of time looking for you and failing to find you when you were on duty.

The Home Manager discussed with you the issue of other members of staff being asleep during night shifts. You said she would make sure they were not asleep.

You were suspended from the Home on 21 August 2020 pending investigation.

During your investigatory interview on 29 August 2020 you denied ever having fallen asleep while on duty and explained that sometimes you would sit with your headphones on.

In your response to the NMC regarding these allegations, you do not accept that you fell asleep while on duty.

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

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

Charge 1

That you, a registered nurse, while employed as a Deputy Manager:

On one or more occasions between approximately May 2020 and 21 August 2020 slept on duty.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Ms 2, Ms 3 and your evidence.

Ms 2 described in her evidence in detail that you fell asleep on a number of occasions and that this happened regularly. She gave consistent and detailed accounts of different instances over the three month period which forms the subject of this charge where this had occurred.

The panel found Ms 2's evidence to be supported by Ms 3's account. Ms 3 was consistent in her evidence about one incident where she found you asleep lying down on a sofa in the lounge with your feet up and a face mask covering your whole face.

You deny the allegation and stated in oral evidence that you have never fallen asleep on duty. You explained in relation to the incident described by Ms 3, when you admitted that

you had been found lying on a sofa in a dark room with a mask over your eyes, that this came about because of your unusual and playful relationship with a particular resident.

The panel considered that although the burden of proof does not lie on you, your explanation of events lacked credibility and did not make sense.

The panel considered that the evidence of both witnesses was credible and consistent. It considered that neither witness would have any particular reason to fabricate their accounts. The panel noted that both witnesses expressed frustration in their evidence at not being able to find you in the Home when you were needed. The panel did not find this surprising and did not consider that it indicated that their evidence was unreliable on this issue.

The panel determined that, on the balance of probabilities, it was more likely than not that it was a frequent occurrence for you to sleep on duty.

The panel therefore found charge 1 proved.

Charge 3

On an unknown date asked one or more colleagues not to report that you had slept on duty in exchange for not reporting them.

This charge is found not proved.

Before considering charge 2, the panel first decided to establish whether charge 3 was found proved. In deciding on charge 3, the panel took into account the evidence of Ms 3 who was the only witness that provided evidence in relation to this charge.

Ms 3's evidence is that she overheard a conversation where you told another member of staff not to report you for sleeping, and that in exchange you would not report them for sleeping while on duty.

Ms 3 accepted in her evidence that she could not remember any of the details surrounding the conversation she overheard but did remember the conversation itself. The panel noted that in her written evidence she stated that the conversation involved more than one colleague. However, in her oral evidence she only recalled one colleague. At no point did Ms 3 identify the colleague or colleagues by name.

Your position is that this conversation did not happen.

The panel considered that Ms 3's evidence regarding this event was at times inconsistent and lacked detail. The panel considered that Ms 3 did not provide context to the conversation i.e. who you had been speaking to and where and when the conversation took place. The panel also noted that Ms 3 made no reference to this conversation either in her email on 27 August 2020 or in her local statement where she was specifically asked whether she had any other matters that she would like to mention that might be relevant to your alleged sleeping on duty.

The panel considered that Ms 3's evidence was not sufficient for the panel to be satisfied, on the balance of probabilities, that this conversation took place.

The panel therefore found charge 3 not proved.

Charge 2

That you, a registered nurse, while employed as a Deputy Manager:

On one or more occasions between approximately May 2020 and 21 August 2020 permitted staff to sleep on duty.

This charge is found not proved.

The panel considered that there was no direct evidence presented by the NMC in respect of charge 2. In particular, the NMC produced no direct evidence that supported the allegation that other members of staff had been sleeping on duty or that you had permitted this to happen. The NMC's case being that this charge could be proved by drawing an inference from the alleged conversation which is the subject of charge 3. Having found charge 3 not proved, the panel determined that it could not find charge 2 proved.

Charge 4

That you, a registered nurse, while employed as a Deputy Manager:

1. On one or more occasions between approximately May 2020 and 21 August 2020 slept on duty.

This charge is found not proved.

Having found charge 3 not proved this charge fell away and could not be found proved.

Fitness to practise

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

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

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

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. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.'*

The panel heard evidence from you under affirmation.

You said you wanted to remain working in healthcare but wanted to take some time away from nursing. You told the panel that you are currently working with the agency Big ANT Healthcare as part of the COVID Rapid Response Team in the capacity of a Senior Healthcare Assistant. You described your current working conditions as quite difficult. You told the panel that you are sent to care homes in crisis due to the pandemic. You explained that many healthcare professionals have been sent home after getting positive

lateral flow tests and some staff are scared to go into the homes because they do not want to catch Covid19. You said it is very difficult because when laundry and cleaning staff don't come in, the healthcare staff have to pick up those jobs as well.

You said a typical shift might involve you being deployed five minutes before the start of a shift and you can be expected to drive anywhere up to two hours away to assist a home. You said you are currently only working in homes with covid19 outbreaks and you are never quite sure what you will be walking into. You said if you are leading the shift it is difficult because you do not know the home, the residents or staff and they do not know you. You said you have to think on your feet. You told the panel that it has been challenging but enjoyable and you have had positive feedback about your performance in this role.

You said that you make sure you are always visible and you tell staff where you are going and how long you will be. You said that some homes have pagers or mobile phones to keep in constant communication with colleagues. You told the panel that you are more contactable now than at Asheborough.

You told the panel that you have kept your skills and knowledge up to date by reading Medscape, RCN bulletins and the British Medical Journal. You told the panel that you would like to return to nursing within nursing homes for residents with dementia patients. You said it is your passion and you feel you have a lot to offer the nursing profession.

You said you were sorry that it appeared that you were sleeping but you were not remorseful for something you have not done. You said you would do things differently now by making sure you were more visible in the Home and you said you were sorry the team felt unsupported.

You said that you had not undertaken training in relation to being in a managerial position. You stated that you do not intend to go back into a managerial role and have found the experience of being unfairly dismissed from the Home traumatic.

You said hypothetically that if you were to find that you had fallen asleep accidentally you would go get a coffee find staff and see if they are okay. You would walk around the building keep active and get fresh air. When asked whether you should report yourself for sleeping you said you do not know because it has never happened to you.

When asked how you can reassure the panel that this situation will not arise again you said that the Home Manager described you as trustworthy and reliable and there have been no complaints from your current role and you referred to a text message from your employer that personally commended your work. You said you are much more cautious about putting yourself in this type of position again. You told the panel to reduce the risk of sleeping on duty you need to be healthy and make sure you sleep during the day. You should have healthy snacks, keep moving around and chat to your colleagues. You said you have always taken these steps to reduce the risk of sleeping on duty.

Ms Kerridge relied on her written submissions and invited the panel to take the view that the facts found proved amount to misconduct. Ms Kerridge referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code).

Ms Kerridge submitted that the misconduct in this case is serious professional misconduct since it presented a risk to residents under your care. She submitted that when you were asleep on duty, the Home had 25 percent less staff capacity than required and no effective nurse and you would not have been able to ensure that residents were receiving a safe standard of care or any nursing care. She submitted that by falling asleep and not being

easily found or contactable, carers wasted significant amounts of time looking for you instead of maintaining and ensuring the safety and welfare of residents.

Ms Kerridge submitted that these sleeping incidents took place on multiple occasions over a four-month period. She submitted that the evidence in this case indicates that your conduct, while sometimes accidental, on some occasions arose from a deliberate decision to put yourself in a position and environment that fostered sleep and minimised interruptions from other staff on duty. She submitted that you were aware that other staff members had found you asleep on various occasions since they woke you up and joked about it.

Ms Kerridge submitted that as the senior person on duty during the relevant shifts you were responsible for leading staff and despite the Home Manager raising concerns with you about other staff members sleeping on duty, you were not open with the Home Manager about sleeping on duty yourself.

Ms Deignan submitted that although you deny sleeping on duty you accept the panel's finding at charge 1. She submitted that you do recognise the seriousness of a nurse sleeping on duty and all the consequences involved and you accept that this would be regarded as misconduct.

Submissions on impairment

Ms Kerridge moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for*

Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant
[2011] EWHC 927 (Admin).

Ms Kerridge submitted that your serious misconduct impairs your fitness to practise because you put residents under your care at risk of harm for a significant period of time during a national health crisis when residents relied on Care Home staff more heavily for all aspects of care.

Ms Kerridge submitted that you have engaged with the NMC in these proceedings and have continued to work in a clinical field and in a leadership position, even if not as a nurse. You have provided evidence of remediation efforts but she submitted that your recent training does not go directly to the misconduct found in this case. She submitted that it does not address issues of managerial oversight, being open with one's employer or candour, integrity or communication.

In relation to insight Ms Kerridge submitted that in your reflective piece you identified the risks that may arise when someone in your position at the time falls asleep on duty, that this is a purely theoretical exercise and offered no real insight into your actions during the relevant period.

Ms Kerridge submitted that your failure to make any changes to your behaviour, even when other staff member were aware you were sleeping on shift, together with your failure to be open with your employer, suggests there are attitudinal issues of concern.

Ms Kerridge submitted that a finding of impairment on the grounds of public protection is justified given that you have not shown remorse, accountability or insight into your conduct and therefore there is a real risk of repetition. She further submitted that professional

standards and public confidence in the profession would be undermined if a finding of impairment was not made.

Ms Deignan asked the panel to take into account context. She submitted that it was the first lock down from a global pandemic and there was increased workload and pressure on staff and this impacted on the behaviours of residents.

Ms Deignan submitted that the issues of sleeping on duty can be remedied and no evidence of attitudinal issues has been put before the panel. Ms Deignan submitted that you have changed your practice in order to avoid the possibility of a similar challenge being made in the future. She submitted that in the care homes you currently work in you take steps to know where carers and staff are likely to be and whether it is possible to hear call bells throughout the building.

Ms Deignan submitted that you know the importance of eating healthily, staying hydrated and walking around the building to maintain energy levels specifically on a night shift. You also ensure that other carers are also able to work through the night by placing water on the medication trolleys to help them stay hydrated. Ms Deignan submitted that you recognise the importance of a nurse staying 100 percent present on shifts 100 percent of the time. She invited the panel to find that you have changed in relation to being available at all times.

Ms Deignan referred the panel to the positive testimonials and reference from your current employer. She submitted that you have worked multiple shifts in multiple places with no reports of any concerns about your practice or specifically about sleeping on shift.

Ms Deignan submitted that you are entitled to maintain your position that you denied the allegation at charge 1 but accepted the panel's finding. Ms Deignan relied on the case of

Yuseff v. GMC [2018] EWHC 13 (Admin). She said this was authority for the proposition that you were not prevented from demonstrating sufficient insight to satisfy a committee that there was no risk of repetition until such time as you accepted that you had acted in the way charged. In this case, she submitted, you had shown sufficient insight in your written and oral evidence to allay any concerns of repetition.

Ms Deignan submitted there is no evidence before the panel to say that in the future you are likely to put patients at unwarranted risk of harm and she invited the panel to find there are no public protection issues.

In relation to public interest, Ms Deignan submitted that a well-informed member of the public would be aware of the pandemic and the warm public sentiment towards carers and would be aware of your subsequent work as a carer and would consider that a finding of impairment on public interest grounds was not required.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

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

“1.2 make sure you deliver the fundamentals of care effectively

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

4 Act in the best interests of people at all times

8 Work cooperatively

8.2 maintain effective communication with colleagues

8.5 work with colleagues to preserve the safety of those receiving care

8.6 share information to identify and reduce risk

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

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

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

20 Uphold the reputation of your profession at all times

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

20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people

25 Provide leadership to make sure people’s wellbeing is protected and to improve their experiences of the health and care system

25.1 identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first”

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 as a result of its finding charge 1 proved, your actions fell short of the standards expected of a registered nurse. The panel considered that your actions went against the rules and practices of the Care Home in that you were not permitted to fall asleep while on shift, as you admitted in your oral evidence.

The panel was of the view that the misconduct in this case is serious professional misconduct since it presented a risk of harm to residents under your care. The panel noted that when you were asleep on duty, the Home had 25 percent less staff capacity than required and no effective nurse.

It also considered that whilst you were asleep you would not have been able to ensure that:

- residents were receiving a safe standard of care or any nursing care at all
- carers were upholding the relevant standards of care expected
- any response to an incident was timely and subject to your full attention
- carers had ready access to nursing or managerial support and advice

The panel also considered that by falling asleep and not being easily found or contactable, carers wasted significant amounts of time looking for you instead of maintaining and ensuring the safety and welfare of residents. The panel also took into account its finding that sleeping incidents took place on frequent occasions over a four-month period and that on at least some of these occasions your conduct was deliberate.

The panel found that your actions at charge 1 did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. 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)
- e) ...
- f)

The panel found limbs a-c of the *Grant* test were engaged. The panel finds that patients were put at risk of harm as a result of your misconduct and you had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

The panel accepted the submissions of Ms Deignan based on the case of *Yusuff* that a registrant should not be criticised for lack of insight where she did not show remorse for facts found proved against her which she continued to deny. In such a case, like the present one, the panel was assisted by the guidance set out in the NMC document entitled 'Has the concern been addressed', in particular the following paragraph:

'Where a panel has found that a nurse, midwife or nursing associate was responsible for incidents that they denied (or continue to deny), this should not bar the nurse, midwife or nursing associate from being able to show insight. They may not have insight into the particular events that occurred, but they may be able to show insight by having an understanding of the need to minimise the risk of similar events occurring in the future, and the steps that might be taken to achieve this.'

The panel has not relied on a lack of remorse as indicating continuing impairment in your case in view of the fact that although you deny the allegation you have accepted the panel's finding of fact in relation to charge 1.

The panel considered your oral evidence and reflective statements. It concluded that both demonstrated that you have some insight into the seriousness of sleeping on duty and the impact this may have on patients in your care and on your colleagues.

The panel was satisfied that the misconduct identified in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it, including any evidence from others who have experience of your recent work, in determining whether or not you have taken sufficient steps to strengthen your practice.

Your evidence to the panel was that you ensure you stay awake on duty in your current role by eating healthy food, staying active and getting fresh air. You told the panel that you have always done this. You also stated that you now take steps to ensure that you are able to stay in contact with colleagues at every workplace that you are sent to. The panel took into account that you have worked as a carer since April 2021 and noted that no issues have been raised in your practice particularly regarding sleeping on duty. However, the panel considered that your current role as a Carer in a Covid Rapid Response Team, where your services are specifically required for homes in crisis due to the impact of Covid, is not comparable to your previous role as the sole nurse in charge of a care home

where there were lulls in the level of activity during the night shift due to most residents being asleep. It also noted that you have not worked as a nurse in similar circumstances as detailed in charge 1 since your dismissal.

The panel was therefore concerned that in the absence of evidence of you working without issue as a nurse on a night shift or any evidence that you had changed the steps that you have always taken to ensure that you do not sleep on duty there remained a significant risk of repetition with a consequent risk of harm to patients. 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 because you were found to have been asleep on duty frequently over several months and have thereby put highly vulnerable residents at risk of harm. It therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your 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 12 months. The effect of this order is that your name on the NMC register will show that you are subject to a conditions of practice order and anyone who enquires about your registration will be informed of this order.

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

Submissions on sanction

Ms Kerridge submitted that in your case the appropriate sanction would be a conditions of practice order and a suitable length would be 12 months with a review before its expiry. She suggested possible conditions the NMC say are appropriate and workable and meet the factors highlighted by the panel that would require addressing. She suggested similar conditions to your current interim conditions of practice order.

Ms Kerridge submitted that no action or a caution order were not appropriate in the circumstances of this case. Ms Kerridge submitted that 12 months is a sufficient amount of time for you to find work as a nurse and for your performance and conduct to be assessed and reviewed. Ms Kerridge submitted that a suspension order or a striking-off order would be disproportionate in the circumstances.

Ms Kerridge also informed the panel of a previous referral made to the NMC in 2016. You were referred to the NMC by the police for drink driving and subsequently convicted. You were suspended by the NMC for 4 months on 21 April 2017. The order was reviewed on 8 September 2017 and that panel found your practice no longer impaired and revoked the order. Ms Kerridge informed the panel that in the same year you also referred yourself to the NMC for the same drink driving incident and the case was closed at the screening stage.

Ms Deignan referred the panel to the matter of your previous referral and submitted that it is unrelated to the matter the panel is considering today.

Ms Deignan reminded the panel that it will consider what the aggravating and mitigating factors are in this case. She asked the panel to consider as mitigation that you have

engaged throughout the NMC proceedings and are committed to the nursing profession and would like to return to practice as a registered nurse.

Ms Deignan submitted that the conclusion of this case marks the end of a difficult and stressful time leading up to this substantive hearing and you will now focus on your career and find work as a nurse in order to provide evidence of safe practice that will enable you to return to nursing without restriction.

Ms Deignan proposed changes to the terms of the current interim conditions if the panel decided to impose a conditions of practice order. She suggested removing the restriction regarding working for an agency and removing the requirement that your supervision be undertaken by a nurse senior to you. She also suggested that a Personal Development Plan would be more appropriate to address the issues raised than the current condition which requires monthly meetings with your line manager.

Ms Deignan submitted that 12 months would be an appropriate length for the conditions of practice order as this is a focused concern. She submitted that you say you have your confidence back, are committed to returning to practice and 12 months would enable you to provide sufficient evidence that you have addressed the panel's concerns.

Ms Deignan made the following submissions if the panel was minded to consider a different sanction. She conceded that no further action or a caution order would not be appropriate in view of public protection issues identified by the panel. She submitted that a suspension is not appropriate as the concerns are capable of remediation, you have demonstrated some insight and do not require temporary removal from the register.

Decision and reasons on sanction

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

SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Your conduct put vulnerable patients at risk of harm.
- Your conduct involved multiple instances of sleeping on duty over a 4 month period.
- Your conduct occurred whilst you were in a leadership position.
- Some of the instances of your misconduct were identified as deliberate.

The panel also took into account the following mitigating features:

- You provided positive testimonials from your current employment.

The panel noted the previous referral and considered that it was not relevant to its decision at this hearing.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection issues identified. 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 your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *‘the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.’* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

The panel found no evidence of deep-seated personality or attitudinal problems although it noted some concerns about your attitude. The panel noted that the concerns did not involve your clinical practice but involved concerns about you sleeping on duty, a concern which it considered can be properly monitored and assessed. The panel also heard evidence that you wish to return to nursing and you will make efforts to find nursing work to be able to provide evidence to the NMC.

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 you would be willing to comply with conditions of practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards, you should be able to return to practise as a nurse.

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

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of your case and did not require temporary removal from the register.

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 limit your nursing practice to a single substantive employer (which should not be an agency).
2. You must not be the registered nurse in charge of any shift.
3. You must ensure that you are supervised any time you are working. Your supervision must consist of working at all times on the same shift as, but not always directly observed by, a registered nurse.
4. You must provide quarterly reports to the NMC from your line manager or supervisor setting out the standard of your conduct and your clinical performance with particular regard to sleeping on duty.
5. You must keep the NMC 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.
6. You must keep the NMC 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.
7. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
 - d) 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
8. You must tell your NMC 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.
9. You must allow your NMC 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 12 months to enable you to secure employment as a nurse and for your practice to be reviewed and assessed.

Before the order expires, a panel will hold a review hearing to see how well you have 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 for another order.

Any future panel reviewing this case would be assisted by:

- Your attendance at the review hearing and your continued engagement with the NMC.
- A reflective piece demonstrating lessons learnt from these proceedings.
- Testimonials from employers and colleagues as to your safe and effective practice as a nurse.

This decision will be confirmed to you 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 your own interests until the conditions of practice 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 Ms Kerridge. She submitted that an interim order is necessary for the protection of the public and is otherwise in the public interest to cover the appeal period.

Ms Deignan submitted she does not oppose the application.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the 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 due to cover the appeal period.

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 you are sent the decision of this hearing in writing.

That concludes this determination.