

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

**Substantive Hearing
Tuesday 4 January 2022 – Friday 7 January 2022**

Virtual Hearing

Name of registrant: Mrs Karen Ingrid Mason

NMC PIN: 82G1362E

Part(s) of the register: Registered Nurse
RN2, Adult Nurse (7 August 1984)
RN1, Adult Nurse (6 September 1993)
RN8, Children's Nurse (29 July 1996)

Area of registered address: Gwyned

Type of case: Misconduct

Panel members: Sue Heads (Chair, Lay member)
Janine Ellul (Registrant member)
Sue Davie (Lay member)

Legal Assessor: Oliver Wise

Panel Secretary: Kevin Toskaj (4 – 5 January 2022)
Megan Winter (6 – 7 January 2022)

Nursing and Midwifery Council: Represented by Amanda Bailey, Case Presenter

Mrs Mason: Not present and not represented

Facts proved: Charges 1.1.1, 1.1.2, 1.2, 2.1

Facts not proved: Charge 2.2

Fitness to practise: **Impaired**

Sanction: **Suspension order – 6 months (with review)**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Mason was not in attendance and that the Notice of Hearing letter had been sent to Mrs Mason's registered address by recorded delivery on 1 December 2021.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Mrs Mason's registered address on 2 December 2021. It was signed for against the printed name of '*K.MASON*'.

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

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

The panel accepted the advice of the legal assessor.

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

Decision and reasons on proceeding in the absence of Mrs Mason

The panel next considered whether it should proceed in the absence of Mrs Mason. It had regard to Rule 21 and heard the submissions of Ms Bailey who invited the panel to

continue in the absence of Mrs Mason. She submitted that Mrs Mason had voluntarily absented herself.

Ms Bailey referred the panel to the note of a telephone call from Mrs Mason to her NMC case officer, dated 15 July 2021, stating:

'[PRIVATE]. I asked if she would be happy for the panel to proceed. She said that she would.'

Ms Bailey also directed the panel to a second note of a telephone call between Mrs Mason and the NMC, dated 20 December 2021, stating:

'She [Mrs Mason] said straight away that she won't be able to attend.'

Ms Bailey submitted that Mrs Mason has not requested an adjournment. She also submitted that this case addresses allegations dating back to 2018/19 and there is a strong public interest in the expeditious disposal of the case. Further, Ms Bailey submitted that not proceeding would inconvenience the witnesses who are prepared to give evidence during the hearing.

The panel accepted the advice of the legal assessor. The panel noted that its discretionary power to proceed in the absence of Mrs Mason under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William) (No.2)* [2002] UKHL 5, and he quoted from the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162.

The panel has decided to proceed in the absence of Mrs Mason. In reaching this decision, the panel has considered the submissions of Ms Bailey, the communication between Mrs Mason and the NMC, and the advice of the legal assessor. It has had particular regard to the overall interests of justice and fairness to all parties. The main considerations were:

- Mrs Mason has informed the NMC, in two telephone calls dated 15 July 2021 and 20 December 2021, that she will not be attending the hearing and confirmed she is content for the hearing to proceed in her absence;
- No application for an adjournment has been made by Mrs Mason;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Three witnesses are due to give oral evidence in this hearing;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

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

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

Details of charge

That you, a Registered Nurse

1. Whilst employed by Eithinog Leonard Cheshire Care Home as a Nurse and registered for agency nursing work with Key Care Support (KCS):

1.1 Worked a shift at Ysbyty Gwynedd Hospital (the Hospital) through KCS whilst claiming sick pay from the Home on one or both of:

1.1.1 27 October 2018,

1.1.2 9 February 2019

1.2 On 11 January 2019, worked a shift at the Hospital through KCS when you were due to undertake nursing work at the Home

2. Your conduct at charge 1.1 was dishonest in that:

2.1 You claimed sick pay from the Home to which you knew you were not entitled by virtue of being fit to work or, by attending agency shifts, you represented to KCS and/or the Hospital that you were fit to work when you knew you were not

2.2 You claimed sick pay to which you knew you were not entitled by virtue of carrying out paid work for another employer.

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

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

At the outset of the hearing, Ms Bailey made a request that this case be held partly in private on the basis that proper exploration of Mrs Mason's case involves references to her health. The application was made pursuant to Rule 19.

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 will be reference to Mrs Mason's health, the panel determined to hold these parts of the hearing in private as and when such issues are raised.

Background

Mrs Mason was employed by the Eithinog Leonard Cheshire Care Home ('the Home') and worked agency shifts through Key Care and Support Agency (KCS). It is alleged that on two occasions in October 2018 and February 2019 Mrs Mason worked agency shifts at the Hospital whilst on sick leave from the Home. Mrs Mason was paid statutory sick pay by the Home and was paid for her work at the Hospital. It is also alleged that on 11 January 2019, Mrs Mason worked an agency shift at the Hospital when she was due to be on duty at the Home.

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 Bailey, together with limited information from Mrs Mason.

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

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: Service Manager employed by the Leonard Cheshire Group (LCG) working at the Home.
- Ms 2: Temporary Staffing Manager at the Hospital.
- Mr 1: Director and majority shareholder of KCS.

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 the NMC and the written responses of Mrs Mason.

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

Charge 1.1.1

1. Whilst employed by Eithinog Leonard Cheshire Care Home ('the Home') as a Nurse and registered for agency nursing work with Key Care Support (KCS):

1.1 Worked a shift at Ysbyty Gwynedd Hospital (the Hospital) through KCS whilst claiming sick pay from the Home on one or both of:

1.1.1 27 October 2018

This charge is found proved.

In reaching this decision, the panel first examined whether, on the balance of probabilities, Mrs Mason worked on 27 October 2018. The panel had regard to her signed agency timesheet for this period which indicated that Mrs Mason worked the shift on 27 October 2018. The panel noted that the time sheet had been authorised by a staff nurse at the Hospital. In addition, the panel also referred to Mrs Mason's payslip for this period, showing that she was paid by KCS for that shift.

The panel next considered whether Mrs Mason was signed off as sick and had received sick pay from the Home. The panel took into account [PRIVATE] and would therefore have included the date that Mrs Mason is alleged to have worked at the Hospital.

The panel also heard oral evidence from Ms 1 where she confirmed that Mrs Mason was recorded sick on the Home's records for 27 October 2018. In light of this evidence, the panel determined that it was more likely than not that Mrs Mason was paid sick pay for this date.

The panel also had regard to Mrs Mason's written response to the charge, dated 26 April 2019, where she states:

'I also want to clarify I did not work whilst off sick at Leonard Cheshire when I had a broken arm & was in a cast.'

The panel noted that the charge related to working [PRIVATE] not specifically when Mrs Mason had a broken arm and was in a cast. Mrs Mason also produced a handwritten note [PRIVATE]. However, the panel noted [PRIVATE] Mrs Mason was signed off as not fit to work.

The panel was satisfied that, despite her limited evidence, Mrs Mason worked for KCS while she was receiving sick pay from the Home.

Given all the reasons outlined above, the panel concluded that, on the balance of probabilities, Mrs Mason worked a shift at the Hospital on 27 October 2018 while she was receiving sick pay from the Home. The panel finds charge 1.1.1 proved.

Charge 1.1.2

1. Whilst employed by Eithinog Leonard Cheshire Care Home ('the Home') as a Nurse and registered for agency nursing work with Key Care Support (KCS):

1.1 Worked a shift at Ysbyty Gwynedd Hospital (the Hospital) through KCS whilst claiming sick pay from the Home on one or both of:

1.1.2 9 February 2019

This charge is found proved.

In reaching this decision, the panel first examined whether Mrs Mason worked on 9 February 2019. The panel had regard to Mrs Mason's signed KCS timesheet which indicated that she worked a shift on 9 February 2019. The panel noted that the timesheet had been signed by a sister at the Hospital. It also had before it Mrs Mason's payslip from KCS for this period showing that she was paid for a shift on 9 February 2021.

The panel next considered whether Mrs Mason was signed off sick and had received sick pay from the Home. The panel took into account Mrs Mason's [PRIVATE]. The panel noted that Mrs Mason's timesheet for this period had initially stated absent; however, this had been corrected to say '*sick*'. The panel accepted the oral evidence of Ms 1 that it was common practice to write '*absent*' until a fitness to work certificate from an employee had been received by the Home. [PRIVATE]. Given that Mrs Mason's timesheet is recorded as sick for the 9 February 2019 shift, the panel determined that it was more likely than not that Mrs Mason was paid sick pay for this date.

In light of all of the reasons above, the panel concluded that, on the balance of probabilities, Mrs Mason worked at the Hospital on 9 February 2019 while being paid sick pay at the Home.

Charge 1.2

1. Whilst employed by Eithinog Leonard Cheshire Care Home ('the Home') as a Nurse and registered for agency nursing work with Key Care Support (KCS):

1.2 On 11 January 2019, worked a shift at the Hospital through KCS when you were due to undertake nursing work at the Home

This charge is found proved.

In reaching this decision, the panel took into account Mrs Mason's KCS payslip for this period which indicated that she was paid for a shift on 11 January 2019. The panel also had before it Mrs Mason's written responses to the charges where she stated, '*worked YG*' thus confirming that she did work at the Hospital on the alleged date. The panel also noted that Mrs Mason's written response stated "*A/L from Eithinog on this date*".

The panel next had regard to Ms 1's NMC witness statement in which she said that Mrs Mason was due to work at the Home on 11 January 2021. Ms 1 states, '*On 11 January 2019, the Registrant was scheduled to work between the hours of 07:45 and 14:00. The registrant should have been aware that she was due to work on 11 January 2019 between 07:45 and 14:00 because she knew where the rota was kept.*'

During her oral evidence, Ms 1 told the panel that Mrs Mason had not requested any annual leave for 11 January 2019 and would have known how to do so, having requested annual leave over the Christmas period in 2018. The panel noted that there were a number of discrepancies between Mrs Mason's handwritten notes headed "Worked" provided to the NMC, and all the timesheets from the Home.

The panel accepted Ms 1's evidence that Mrs Mason was due to work at the Home on this date. The panel found Ms 1 to be a credible witness who held a senior position as service manager of the Home who was responsible for its records and would have approved any annual leave requests. On the balance of probabilities, the panel determined that Mrs Mason was due to attend work on 11 January 2019.

Given all of the reasons outlined above, the panel concluded that Mrs Mason worked a shift for the Hospital on 11 January 2019 whilst being due to undertake nursing work at the Home. The panel therefore finds charge 1.2 proved.

Charge 2.1

2. Your conduct at charge 1.1 was dishonest in that:

2.1 You claimed sick pay from the Home to which you knew you were not entitled by virtue of being fit to work or, by attending agency shifts, you represented to KCS and/or the Hospital that you were fit to work when you knew you were not

This charge is found proved.

The panel considered whether the actions in charge 1.1, which are found proved, amounted to dishonesty.

The panel applied the test for dishonesty set out in the judgement of *Ivey v Genting Casinos (UK)* [2017] UKSC 67. The test applied by the panel was:

1. What, subjectively, was the registrant's actual state of knowledge or belief as to the facts?
2. Was the registrant's conduct, in the light of that knowledge or belief, dishonest according to the objective standards of ordinary, decent people?

The panel also accepted the advice of the legal assessor that compelling evidence must be adduced for there to be a finding of dishonesty.

The panel was satisfied that Mrs Mason's actual state of knowledge or belief in respect of the actions in charge 1.1 consisted of a deliberate intention to conceal that she had been [PRIVATE]. The panel took into account Mr 1's witness statement where he stated that *'The Registrant told me that she had been permitted to work for LCG [the Home] on light duties around that time.'*

The panel was of the view that Mrs Mason would have known that she had been assessed [PRIVATE]. Mr 1 confirmed that he would not have permitted Mrs Mason to work if he had known that [PRIVATE]. [PRIVATE]. By working both shifts at the Hospital, Mrs Mason dishonestly made KCS and the Hospital believe that she was indeed fit to work [PRIVATE].

Moreover, the panel bore in mind that during this time, Mrs Mason knew that she *should not* be working at the Hospital as she was simultaneously receiving sick pay from the Home. Notwithstanding, Mrs Mason still worked shifts at the hospital on 27 October 2018 and 9 February 2019.

The panel next considered whether Mrs Mason's state of knowledge or belief as to the facts as set out above would, objectively, be regarded as dishonest according to the standards of ordinary, decent people. The panel was satisfied that it would be so regarded.

In light of all of the reasons above, the panel finds that, on the balance of probabilities, Mrs Mason's actions in 1.1 amounted to dishonesty because by attending agency shifts, she represented to KCS and the Hospital that she was fit to work despite knowing she was not. As such, it finds charge 2.1 proved.

Charge 2.2

2. Your conduct at charge 1.1 was dishonest in that:

2.2 You claimed sick pay to which you knew you were not entitled by virtue of carrying out paid work for another employer.

This charge is found NOT proved.

In reaching its decision, the panel determined that Mrs Mason was in fact entitled to receive sick pay from the Home. During both shifts outlined in charge 1.1, Mrs Mason had provided the Home with [PRIVATE]. By carrying out the work on both 27 October 2018 and 9 February 2019, it could not be said that Mrs Mason was fit to work and thus not entitled to sick pay.

The panel concluded that Mrs Mason's dishonesty did not derive as a result of receiving sick pay from the Home that she was not entitled to, but on the basis set out in charge 2.1. Given the reasons above, the panel did not find charge 2.2 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 Mrs Mason'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 Mrs Mason's suitability to remain on the register unrestricted.

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

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

Submissions on misconduct

Ms Bailey addressed the panel on misconduct and the requirement 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 *Roylance v General Medical Council and Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Bailey submitted that the allegations against Mrs Mason are matters of misconduct, her failings are serious and involve dishonesty. She submitted that, although Mrs Mason's dishonesty was not directly linked to her clinical practice, it was connected with her work. Ms Bailey submitted that the decision Mrs Mason made was improper, having been [PRIVATE]. Although no actual patient harm was caused, there was a potential risk of harm.

In all the circumstances, Mrs Bailey invited the panel to find that Mrs Mason's actions fell short of the standards expected of a registered nurse and do amount to misconduct.

Submissions on impairment

Ms Bailey 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 *Grant*.

At paragraph 74 of that case, it was held:

'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.'

A summary is set out in Grant at paragraph 76 in the following terms:

"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future."

Ms Bailey submitted that all of the limbs referred to above are engaged in this matter.

Ms Bailey submitted that, whilst no actual physical harm was caused as a result of the charges found proved, her breaching of trust and acting dishonestly had the potential for

risk. She submitted that Mrs Mason breached fundamental tenets of nursing practice and, as a result of her dishonesty, brought the nursing profession into disrepute.

Ms Bailey submitted that dishonesty, as identified, is not easily remediable. She informed the panel that no reflective piece nor indication of any insight had been provided by Mrs Mason in order to address the concerns. Further, she reminded the panel that the matters have been treated as disputed. At present, her remorse and where she is in the process is unknown.

Ms Bailey referred the panel to the 'Proceeding in Absence' bundle which made reference to [PRIVATE]. She submitted that there appears to be no prospect of Mrs Mason returning [PRIVATE]. However, Ms Bailey submitted that there remains a risk of repetition. She further submitted that there are also wider public interest issues which include the need to protect the reputation of the profession and maintain the integrity of the register. Mrs Bailey submitted that taking all this into account, a finding of current impairment is necessary on both public protection and public interest grounds.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code).

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

"8.6 share information to identify and reduce risk

13.4 take account of your own personal safety as well as the safety of people in your care

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

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

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care”

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 charges found proved in this case, save for charge 1.2, amounted to serious misconduct and a fundamental breach of nursing standards. The panel determined that Mrs Mason, as a registered nurse, had a duty of candour to explain that she [PRIVATE]. The panel concluded that fellow practitioners in the profession would deem Mrs Mason’s actions, represented by the charges found proved, deplorable.

In terms of charge 1.2, the panel considered that this charge would not have amounted to misconduct alone. It took into account that this was an isolated incident and, whilst unsatisfactory and had potential to put patients at risk of harm, was not so serious to constitute misconduct.

The panel found that Mrs Mason’s actions, represented by the charges found proved, 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, Mrs Mason’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 was of the view that all the limbs of *Grant* were engaged in this case.

The panel found patients were put at unwarranted risk of harm as a result of Mrs Mason undertaking a clinical role whilst certified as unfit to work. Mrs Mason's misconduct breached the fundamental tenets of the nursing profession and brought its reputation into disrepute. In addition, Mrs Mason was found to have acted dishonestly. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find the charges found proved to be serious.

Regarding insight, the panel considered that there has been no insight shown by Mrs Mason. The panel was of the view that Mrs Mason has not provided any evidence before it today that she has any insight into her behaviour, as set out in the charges found proved nor demonstrated any remorse. In addition, the panel noted that Mrs Mason denied the charges from the outset and had not provided an adequate explanation for her conduct.

In relation to the misconduct involving dishonesty, the panel acknowledged that it would be difficult to remediate as dishonesty is considered an attitudinal issue. However, the panel was of the view that it is not impossible to remediate.

There having been no evidence of remediation provided, the panel considered that Mrs Mason has not demonstrated any understanding of the potential impact her actions could

have had on patients, her colleagues and the reputation of the profession. Further, there is no information to indicate that Mrs Mason even wishes to remediate. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

In light of all the above, the panel had insufficient evidence before it to allay its concerns that Mrs Mason currently poses a risk to patient safety. It considered there to be a risk of repetition of the incidents found proved and a risk of unwarranted harm to patients in her care due to her lack of insight into how her own health status impacts upon her ability to work. Therefore, the panel 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 are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel was of the view that a fully informed member of the public would be very concerned by the panel's findings on the facts found proved and Mrs Mason's misconduct. It concluded that public confidence in the nursing profession would be undermined if a finding of impairment was not made in this case. Therefore, the panel determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Mrs Mason's fitness to practise as a registered nurse is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months with a review. The effect of this order is that the NMC register will show that Mrs Mason's registration has been suspended.

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 Bailey submitted that there is a risk to patient and public safety if Mrs Mason is allowed to practice unrestricted. She submitted that the panel has found misconduct involving dishonesty and current impairment.

Ms Bailey referred the panel to the SG specifically '*Factors to consider before deciding on sanctions*'. She outlined to the panel what the NMC considered to be aggravating and mitigating features.

Ms Bailey invited the panel to consider the sanctions in ascending order, she stated that in view of the panel's findings the most appropriate, fair and proportionate sanction to impose would be a six month suspension order. She submitted that this order is sought on the basis of there being a review as, whilst Mrs Mason has indicated her wishes and current position, there is a potential of change and a prospect of remediation.

Decision and reasons on sanction

Having found Mrs Mason'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 first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Aggravating factors:

- Financial gain from breach of trust;
- Potential risk of harm;
- Abuse of position of trust with KCS and the Hospital; and
- No insight or remorse.

Mitigating factor:

- No previous incidents in 36 years.

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 neither protect the public nor be 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, the public protection and the public interest issues identified, an order that does not restrict Mrs Mason'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 Mrs Mason'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 Mrs Mason'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 is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case is difficult to address through retraining as the concerns relate to attitudinal issues and not clinical or competence issues. Furthermore, the panel concluded that the placing of conditions on Mrs Mason's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered the SG and found that the following features where a suspension order may be appropriate were present in this case:

- *a single instance of misconduct but where a lesser sanction is not sufficient*
- *no evidence of harmful deep-seated personality or attitudinal problems*
- *no evidence of repetition of behaviour since the incident*

Whilst there were two instances, four months apart, of working for KCS while signed off as unfit to work, it was limited to only two across a [PRIVATE]. Mrs Mason had worked for LCG (both as agency and employee) and for KCS for a long time and both Ms 1 and Mr 1 spoke positively about her as a nurse. The panel had no evidence of harmful deep seated personality or attitudinal problems.

The panel considered that a period of suspension would appropriately mark the seriousness of the misconduct in this case, maintain public confidence in the nursing profession and uphold proper professional standards. The panel concluded that a six month suspension order with a review would be proportionate. This would afford Mrs Mason adequate time to demonstrate the development of her insight and remediation, and to engage with her regulator.

The panel seriously considered a striking-off order due to the lack of insight, remorse and remediation Mrs Mason has provided. The panel considered carefully whether a strike off was the appropriate sanction. In what was a very finely balanced decision, where strike off was seriously considered, the panel recognised that Mrs Mason has been practising as a registered nurse for a considerable amount of time without any issue and concluded that a final chance for her to demonstrate the development of her insight and remediation, and to engage with her regulator was a proportionate response. Whilst not attempting to direct any future panel, this panel makes clear that the option of strike off is an available outcome if Mrs Mason does not engage effectively.

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

Any future panel reviewing this case would be assisted by:

- A reflective piece from Mrs Mason;
- Her attendance at the review hearing; and
- Clear evidence of her future intentions.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Mason's own interests until the suspension order takes effect.

Submissions on interim order

The panel took account of the submissions made by Ms Bailey. She submitted that an interim suspension order of 18 months was necessary to protect the public and maintain public confidence in the nursing profession in light of the panel's findings on current impairment.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to protect the public and maintain public confidence in the nursing profession and the NMC as its regulator.

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

That concludes this determination.