

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

**Substantive Hearing
Monday 27 June 2022 – Monday 4 July 2022**

Virtual Hearing

Name of registrant:	Jason Edward Butterworth
NMC PIN:	06H3251E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health Nursing – (September 2006)
Relevant Location:	Lancashire
Type of case:	Misconduct
Panel members:	Deborah Hall (Chair, Registrant member) Kathryn Smith (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Laura McGill
Hearings Coordinator:	Charis Benefo
Nursing and Midwifery Council:	Represented by Dominic Bardill, Case Presenter
Mr Butterworth:	Present and assisted by Ashraf Khan, Special Counsel
Facts proved by admission:	Charges 1 and 2
Facts proved:	Charges 3, 4, 5, 6
Facts not proved:	Charges 7a, 7b, 8
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

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

At the outset of the hearing, Mr Bardill, on behalf of the Nursing and Midwifery Council (NMC) made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to the personal, private and family life matters relating to you, Person A and Person B. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

You indicated that the application was unopposed.

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 the personal, private and family life matters relating to you, Person A and Person B, the panel determined to hold those parts in private as and when such issues are raised.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Bardill to amend the wording of charge 8. It was submitted by Mr Bardill that the proposed amendment would correct a typographical error.

“That you, a Registered Nurse:

- 8) Your actions as detailed at **6 7** above were dishonest in that you made the declaration that you had provided nursing care to Person A and

Person B intending to mislead the NMC regarding your compliance with the revalidation process

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

You indicated that the application was unopposed.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

That you, a Registered Nurse:

- 1) On 28 June 2017 declared on your application form and CV submitted to Hi-Flyers nursing agency that you had worked as part of the nurse bank at Oxen Barn, The Priory Group.
- 2) In September/October 2017 declared on your CV that you had worked as part of the nurse bank at Oxen Barn, The Priory Group.
- 3) Your actions as detailed at charges 1 and 2 above were dishonest in that describing your role in that way, you sought to mislead prospective employers into believing that you had worked as a Registered Nurse at Oxen Barn, The Priory Group, when in fact you had not

- 4) Between 2009 and 2015 failed to complete sufficient hours and training to maintain your NMC registration.
- 5) Between 2009 and 2015 inaccurately declared to the NMC that you had completed sufficient hours and training to comply with the NMC's revalidation requirements.
- 6) Your actions as detailed at charge 5 above were dishonest in that you made a false declaration that you had completed sufficient hours intending to mislead the NMC regarding your compliance with the revalidation process
- 7) Between 2012 and 2015 you inaccurately declared to the NMC that you had provided nursing care to;
 - a) Person A
 - b) Person B
- 8) Your actions as detailed at 7 above were dishonest in that you made the declaration that you had provided nursing care to Person A and Person B intending to mislead the NMC regarding your compliance with the revalidation process

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

Background

The NMC received a complaint in respect of you on 14 November 2018. You first entered onto the NMC's register, as a mental health nurse, on 18 September 2006.

It was reported that you qualified in 2006 and were employed as a nurse until 2008. You allegedly carried out non-nursing care for your uncle, Person A, from 2008 until 2012, and your now estranged wife, Person B, from 2012 until 2016.

In order to renew your registration, you submitted three Notification of Practice (NOP) forms to the NMC between 2009 and 2015, declaring that you had undertaken the required hours of registered practice. For a registered nurse's NOP form to be accepted and their renewal application approved, they must complete 450 hours of registered practice and 35 hours of learning activity relevant to their practice, over the three-year period since their registration was last renewed.

You were employed as a bank support worker at Oxen Barn, The Priory Group from 13 December 2016 to 12 February 2018. You were employed on a casual contract as a support worker in a non-nursing capacity and would not have been expected to complete nursing assessments. You worked a total of 606 hours between December 2016 and January 2018.

You joined Hi-Flyers nursing agency as an agency qualified nurse in 2017 after having provided a CV and application form which stated that you were employed on the nurse bank at The Priory Group. You worked 10 shifts for the agency between 20 June 2017 and 20 November 2017.

You worked shifts at Argyle Park Nursing Home (the Home) and expressed an interest in a full-time permanent position there. You provided that same CV which stated that you were employed on the nurse bank at The Priory Group. You were informally interviewed by the Home Manager on 5 January 2018, and on 22 January 2018, you started a full-time permanent nurse position at the Home.

The allegations in this case are that you maintained your NMC registration for the period between 2008 and 2017 and secured employment as a nurse, by giving false previous employment information, as you had not practised as a nurse for nine years or undertaken courses for revalidation.

There was an agreed set of facts between the parties, detailing previous referrals made by Person B about you. It was your case that the referral made in respect of these proceedings was malicious.

Decision and reasons on facts

At the outset of the hearing, you informed the panel that you made admissions to charges 1 and 2.

The panel therefore finds charges 1 and 2 proved, by way of your admissions.

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 Mr Bardill and by you.

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

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

- Person B: Your now estranged wife/the referrer
- Witness 2: Manager of the Home in October 2017/at the time;

The panel also heard evidence from you under affirmation.

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

In examining the evidence, the panel conducted a full and comprehensive assessment to establish the motives of the witnesses when coming to its decision.

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

Charge 3

That you, a Registered Nurse:

- 3) *Your actions as detailed at charges 1 and 2 above were dishonest in that describing your role in that way, you sought to mislead prospective employers into believing that you had worked as a Registered Nurse at Oxen Barn, The Priory Group, when in fact you had not*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence, including in particular, your oral evidence, your Hi-Flyers 'Social Care Application Form' dated 28 June 2017 and your CV.

The panel also had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional

requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards dishonest.'

The panel bore in mind the NMC's guidance on dishonesty.

The panel considered your admissions to charges 1 and 2, that you:

- 1) On 28 June 2017 declared on your application form and CV submitted to Hi-Flyers nursing agency that you had worked as part of the nurse bank at Oxen Barn, The Priory Group.
- 2) In September/October 2017 declared on your CV that you had worked as part of the nurse bank at Oxen Barn, The Priory Group.

The panel had sight of your CV which stated that:

'...I am currently employed at oxen barn (Craegmoor, priory group) I have been there since December the 16th 2016 on the nurse bank...

(...)

In December of 2016 I began working at oxen barn, residential unit for adults with complex challenging behaviours. My role involves full nursing care. I have completed mental health assessments and compiled care plans, also regularly attending reviews as well as working with various health professionals to meet the individual's needs.' [sic]

The panel also had sight of your Hi-Flyers application form which stated that you worked at Oxen Barn between 2016/2017. You indicated '*nurse bank*' under the heading named '*Job title/Grade*'.

The panel took into account the terminology used in your CV. It considered that you had omitted the words 'support worker', the actual description of your role, and any clarification that you were not working as a nurse. The panel also noted that within the chronology of your CV, you stated that your validation was up to date and that the renewal date was 30 September 2018.

The panel was of the view that based on the information in your CV and the Hi-Flyers application form, it could be reasonably interpreted that you were working as part of the bank of registered nurses at Oxen Barn, The Priory.

In your oral evidence, you told the panel that you worked as a support worker at Oxen Barn, The Priory, within the nurse bank and that you had a very "*hands on*" role. You accepted that you did not make any mention of your actual job role at Oxen Barn, The Priory on your CV or Hi-Flyers application form and stated that this was because it was a "*general CV*" rather than a "*specific CV*". The panel did not accept your reason for failing to specify your actual job role or to clarify that you were not working as a registered nurse, on your CV. The panel was not satisfied that on a "*general CV*", an honest interpretation of the term '*nurse bank*' could be considered to reference you working as a support worker. The panel considered that use of the terminology '*nurse bank*', followed shortly afterwards in your CV by reference to your revalidation being up to date, was intended to mislead the reader into concluding that you had been working as a registered nurse.

The panel therefore determined that it was more likely than not that you sought to mislead prospective employers, namely Hi-Flyers nursing agency and the Home, by stating that you had worked as part of the nurse bank at Oxen Barn on your CV, when you had not.

Charge 4

That you, a Registered Nurse:

- 4) *Between 2009 and 2015 failed to complete sufficient hours and training to maintain your NMC registration.*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence, including in particular, your oral evidence and Person B's oral evidence and Witness Statement dated 2 August 2018.

In Person B's witness statement, she stated that:

'...If asked for evidence of hours worked between April 2008 and August 2017 Jason will have no information as it does not exist.

At no time between April 2008 and August 2017 did Jason work as a nurse and no courses were undertaken by him that were relevant for his revalidation to maintain his registration.'

Person B told the panel that you did not provide any nursing care to Person A or herself.

Person B said that you were in receipt of carers' allowance in respect of Person A from 2008 and that you would look after Person A on most days. Person B told the panel that Person A did not require any medication administration at home, aside from a regular [PRIVATE] injection which you did not administer. She stated that all of Person A's nursing treatment was provided at a day centre [PRIVATE].

Person B [PRIVATE] told the panel that she has always administered her own medication and during this time, you rarely provided any help. Person B said that her sisters, mother, carers and district nurses were “*in and out of the house*” to support her personal care and provide nursing care.

Person B admitted that you administered [PRIVATE] as she found it difficult to do so herself, but that you only did this on about five occasions in total. [PRIVATE]. Person B stated that during this period, you acted as her husband and the father of her children and provided no nursing care. She said that if she could not do anything herself, then people would attend the home to do it for her.

You told the panel that you provided Person A with full-time care and Person B with “24/7 care”. You said that you attended day centre appointments, provided personal care and ordered medication for Person A. In respect of Person B, you said that you administered medication, [PRIVATE], worked alongside various professionals as and when her health matters arose, and handed over to the carers and district nurses that attended the home.

You said that you completed induction programmes for at least two separate employers albeit you did not remain in their employment. You further informed the panel that you completed a Violence and Aggression course, used the internet for your own independent reading and kept up to date with monthly updates from the Alzheimer’s Society in order to complete the sufficient training required to renew your registration. You were unable to provide the panel with any documentary evidence of this. In oral evidence, you told the panel that your “PREP” (Post-Registration Education and Practice) portfolio was at the former marital home, and that you did not have access to obtain these certificates. The panel noted that you provided training certificates covering the period 2018.

The panel heard that you relied solely on the caring duties for Person A and Person B to account for the sufficient nursing hours to maintain your NMC registration.

In oral evidence, when asked what registered nursing tasks you undertook for Person A, you relied on what the panel considered to be basic personal care tasks, such as bathing and ordering medications. In the panel's assessment, you gave no evidence of the tasks that would constitute registered nursing tasks for Person A.

The panel considered that you and Person B provided conflicting evidence relating to the extent of care that you provided to her from 2012. However, it noted from Person B's evidence that her nursing care was attended to by professionals, such as district nurses and podiatrists several times a week. She was attended by carers for 22 and a half hours per week or carried out her care herself as a "*fully independent*" former nurse [PRIVATE]. The panel took into account the agreed evidence that you had administered [PRIVATE] to Person B on a number of occasions, but it considered that this did not amount to a registered nursing task as people are trained to administer [PRIVATE] themselves.

It also considered that had you carried out a registered nursing role for Person B and handed over to carers and district nurses, then you would have been expected to complete the necessary documentation for this, but it had no evidence to suggest that you had done so.

The panel was not satisfied that the care you provided to Person A and Person B amounted to nursing practice which could count towards your registration.

The panel had no documentary evidence to support your oral evidence that you had completed various training between 2009 and 2015.

The panel therefore determined that it is more likely than not that between 2009 and 2015, you failed to complete sufficient hours and training to maintain your NMC registration.

Charge 5

That you, a Registered Nurse:

- 5) *Between 2009 and 2015 inaccurately declared to the NMC that you had completed sufficient hours and training to comply with the NMC's revalidation requirements.*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence, including in particular, your three NOP forms signed 13 September 2009, 12 September 2012 and 12 September 2015.

The panel relied on its reasoning for charge 4 and its finding that between 2009 and 2015, you failed to complete the sufficient hours and training to maintain your NMC registration.

The panel took into account that on your three NOP forms signed 13 September 2009, 12 September 2012 and 12 September 2015, you declared that you had completed 35 hours of learning activity relevant to your practice in the three years prior. You also declared that you had undertaken 450 hours of registered nursing practice in the three years prior, and that you had evidence to support the declaration if required by the NMC.

The panel was satisfied that by failing to complete the sufficient hours and training to maintain your NMC registration between 2009 and 2015, and subsequently declaring that you had done so in your NOP forms, you had made an inaccurate declaration to the NMC. The panel therefore found charge 5 proved.

Charge 6

That you, a Registered Nurse:

- 6) *Your actions as detailed at charge 5 above were dishonest in that you made a false declaration that you had completed sufficient hours intending to mislead the NMC regarding your compliance with the revalidation process*

This charge is found proved.

In reaching this decision, the panel took into account all the evidence, including in particular, your CV and your three NOP forms signed 13 September 2009, 12 September 2012 and 12 September 2015.

The panel also had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67:

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

The panel bore in mind the NMC's guidance on dishonesty.

The panel relied on its reasoning for charge 4 and its finding that between 2009 and 2015, you failed to complete the sufficient hours and training to maintain your NMC registration.

The panel had regard to your CV which stated that:

'In 2008 I began caring full time for an elderly gentleman [PRIVATE]. I continued this role until 2012 when a change in personal circumstances meant I had to take a step back from my career in nursing.'

You clarified for the panel that your “*step back*” from nursing was in reference to not being able to work outside of the home.

The panel did not accept your explanation and determined that it is more likely than not that you had a genuine belief that you were not practising as a nurse and had not completed sufficient hours and training, and so by making inaccurate declarations to the NMC, you sought to mislead the NMC regarding your compliance.

The panel also noted that on your NOP form signed 12 September 2015, you declared that you held, or would hold when you began practising, appropriate cover under an indemnity arrangement in relation to your practice and would be able to provide evidence to support this if required by the NMC. The panel heard your oral evidence that you did not have indemnity insurance in place at the time.

The panel was of the view that having read the NOP form and ticking this specific declaration, you knew that you would have been expected to be covered by indemnity insurance in order to practise as a registered nurse. The panel determined that it is more likely than not that you did not arrange cover by an indemnity insurance policy as you knew that you were not practising as a nurse.

The panel determined that, on the balance of probabilities, it is more likely than not that in respect of your actions in charge 5, you were dishonest in that you knowingly made a false

declaration that you had completed sufficient hours intending to mislead the NMC regarding your compliance with the revalidation process.

Charge 7

That you, a Registered Nurse:

- 7) *Between 2012 and 2015 you inaccurately declared to the NMC that you had provided nursing care to;*
 - a) *Person A*
 - b) *Person B*

This charge is found not proved.

In reaching this decision, the panel took into account all the evidence, including in particular, your oral evidence and your two NOP forms signed 12 September 2012 and 12 September 2015.

You told the panel that you provided nursing care to Person A from 2008 to 2012, and then to Person B from 2012 to 2016. The panel had no evidence that you made a positive declaration to this effect to the NMC.

The panel took into account that on your two NOP forms signed 12 September 2012 and 12 September 2015, you declared that you had undertaken 450 hours of registered nursing practice in the three years prior, and that you had evidence to support the declaration if required by the NMC. There was no reference to Person A and Person B on the NOP forms. The panel had no further evidence before it to suggest that between this period, you had declared or provided evidence to the NMC, which specifically referred to Person A and Person B, or any nursing care provided to them.

The panel was not satisfied that the NMC had proved that between 2012 and 2015, you inaccurately declared to the NMC that you had provided nursing care to Person A and Person B, as there was no evidence of any such declarations before it.

Charge 8

That you, a Registered Nurse:

- 8) *Your actions as detailed at 7 above were dishonest in that you made the declaration that you had provided nursing care to Person A and Person B intending to mislead the NMC regarding your compliance with the revalidation process*

This charge is found not proved.

In reaching this decision, the panel took into account all the evidence.

The panel relied on its reasoning for charges 7a and 7b and its findings that between 2012 and 2015, you did not declare to the NMC that you had provided nursing care to Person A and Person B.

The panel concluded that the NMC had not proved on the balance of probabilities that you were dishonest, and intending to mislead the NMC regarding your compliance with the revalidation process in respect of any declarations relating to Person A and Person B.

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.*’

Mr Bardill referred the panel to his written submissions on misconduct and impairment:

INTRODUCTION

1. *The panel have found Charges 1-2 **proved by admission**, after they were admitted by the above-named REGISTRANT (‘R’).*
2. *Charges 3-6 are found proved on the facts.*
3. *The panel have found Charges 7(a) & (b) and 8, **not proved**.*
4. *It is submitted on behalf of the NMC, that the actions of R, in the context of the charges found proved, amount to misconduct.*

5. *It is further submitted that R's fitness to practice is currently impaired by reason of that misconduct.*

THE LAW & GUIDANCE

Misconduct

6. *There is no universal statutory definition of misconduct, and so we take our definition from caselaw.*

Roylance v General Medical Council [1999] UKPC

7. *In the case of **Roylance** it was held that misconduct involved acts or omissions which fell short of what was proper in the circumstances.*
8. *Furthermore, the above case establishes that it must be serious, and it must be connected to the profession; although the panel should note that conduct removed from medical practice, and even administrative conduct, can still amount to misconduct for the purposes of these proceedings if it was sufficiently immoral, outrageous or disgraceful in character.*

Seriousness

9. *The NMC refers the panel to the NMC Guidance on '**Seriousness**'. In particular the panel are referred to the section titled: '**Serious concerns which could result in harm to patients if not put right**'.*

R (Remedy UK Ltd) v General Medical Council [2010] EWHC 1245

10. *In the above case, it was held that the conduct must be "sufficiently serious that it can properly be described as misconduct going to fitness to practise".*

11. *The case also established that not all acts and omissions will be regulatory matters. At paragraph 37 of the judgment, the case defined misconduct as being of ‘two principles kinds’:*

“First, it may involve sufficient serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.”

12. *It is submitted that in the present case, the former applies, in that the conduct is in the exercise of professional practice, albeit not ‘on shift’, rather than concerning any behaviour or conduct outside of professional practice or unconnected to it.*

Nandi v General Medical Council [2004] EWHC 2317 (Admin)

13. *At paragraph 31 of the above case, **Roylands** was reaffirmed, and it was also held that “the adjective “serious” must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.”*

14. *In relation to the charges found proved by admission, it is submitted that these actions do not amount to ‘sufficient serious misconduct’ alone, however when taken together with Charge 3, where dishonesty has been found proved, the actions do amount to sufficient serious misconduct in that the consequences of staff not being properly qualified or trained, and the dishonesty or lack of candour in claiming otherwise; thus rendering the individual untrustworthy or unreliable. The dishonesty and practicing when not having met the required standard, places residents and patients at a risk of harm.*

15. *It is submitted that an additional consequence of the dishonesty element, and the nature of it being to cover up for a lack of training, is that it placed or places fellow members of staff in difficult positions insofar as they were not able to trust or rely on the candour or honesty of their colleague, and there is a risk that this would have an impact on the care they deliver.*
16. *It is submitted therefore, that in addition to patients coming to real harm as a result of not receiving the required care, which arose out of the lack of monitoring and supervision; dishonesty affects other staff members also, and places them at risk professionally. It is further submitted that the impact on other members of staff, of dishonesty from registrants, in turn risks having an impact on their respective patients.*
17. *It is submitted therefore, that owing to the dishonesty element, and the nature or reason for that dishonesty, the registrant's actions did amount to 'sufficiently serious misconduct' for the purposes of these proceedings.*

Impairment

18. *The meaning of 'Impairment', for the purposes of these proceedings, has no statutory definition, but the NMC guidance defines it as "Suitability to remain on the Register without restriction".*
19. *This question before the panel will be whether, by reason of the misconduct or some other reason, **there is a risk to patient and public safety that is ongoing if R were able to practice without restriction.***
20. *As set out above in these submissions, it is submitted by the NMC that there is a risk to patient and public safety by virtue of the dishonest element to these findings, and the reason for that dishonesty.*

The Public Interest

21. *The panel are reminded of their duty to act in the public interest, which includes protecting the public, but also maintaining confidence in the progression and declaring and upholding proper standards of professional conduct.*

22. *However, the panel may also be assisted by the NMC Guidance titled at INSIGHT AND STRENGTHENED PRACTICE which sets out the factors to be considered. The guidance states:*

“When assessing evidence of the nurse, midwife or nursing associate’s insight and the steps they have taken to strengthen their practice, decision makers will need to take into account the following questions:

Can the concern be addressed?

Has the concern been addressed?

Is it highly unlikely that the conduct will be repeated?

These factors are key points for decision makers to consider, but they are not a definitive test of whether a nurse, midwife or nursing associate’s fitness to practise is currently impaired.”

23. *The panel may be further assisted by the guidance which is titled: ‘**Has the concern been addressed?**’ Which outlines some non-exhaustive factors that the panel may feel demonstrate whether or not concerns have been addressed.*

THE PRESENT CASE

24. *In the present case, it is submitted that R's actions consisted of both actions and omissions.*
25. *It is submitted that the omissions are contained within the Charges found proved.*
26. *The NMC say that the actions or act(s) of R, was the dishonest information provided to the NMC and to prospective employers which resulted in patients being placed at a risk of harm, notwithstanding that there was no actual harm. It is further submitted that the dishonest actions can have an impact on, or create issues for fellow members of staff; placing them at risk of harm too (i.e. the risk of making clinical errors, the risk of not providing care under the belief it had been rendered, etc.). Dishonesty means that information coming from R cannot be relied upon.*
27. *It is submitted that during proceedings, R demonstrated limited insight, and was vague in his answers. This is of course always difficult in a dishonesty case. However, R admitted charges 1-2 at the outset, and has no previous findings against his name.*
28. *The panel may think that without remediation there remains a real risk to patient safety and of repetition, in particular in a dishonesty case, therefore the risk to patient safety would be clear and ongoing. However, the panel may also take the view that owing to the change in circumstances for R, the situation is different and is either remediable or remedied. This is however, not the NMC's position, as the NMC say that dishonesty is extremely difficult to remedy.*
29. *The panel may also consider the fact that R has no previous findings, and has practiced as a Nurse since the alleged incident. Nevertheless, it is a matter for the panel as to whether they feel sufficient insight has been demonstrated and sufficient steps taken to eliminate any risk.*

30. *In addition, the panel may think that there is a public interest in a finding of impairment, in particular where patients have been placed at risk of harm or staff put in difficult or risky situations pertaining to their own practice. It is submitted that, whilst the other submissions still stand, impairment may be found in any event in this case, owing to the public interest arising out of the dishonesty and the reason for that dishonesty.*

31. *More specifically, impairment can be found in order to maintain public trust and confidence in the profession, and to fulfil one of the panel's duties of declaring and upholding proper standards of professional conduct. If the panel are of the view that a finding of impairment is in the public interest in order for them to fulfil this duty then they ought to find impairment on this ground.*

Code of conduct – Core Duties

32. *It is submitted that owing to all of the above, R is in breach of the following duties taken from the NMC Code of Conduct:*

Core Duty 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.*

Core Duty 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*

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

CONCLUSION

33. *It is submitted that R's actions were in breach of the above parts of the NMC Code.*
34. *It is submitted that those breaches amount to misconduct, in that they fell short of what was proper in the circumstances.*
35. *It is submitted that this misconduct is sufficiently serious, pursuant to the case law and NMC guidance on seriousness.*
36. *The panel are invited to consider the case law, NMC guidance (in particular relating to dishonesty) and all the circumstances; balancing fairness between the parties and having regard in particular for the impact of any findings on R, with proportionality in mind.*
37. *The NMC submit that it is a matter for the panel as to whether there remains a real risk of repetition, a risk of harm to patients or public safety, or whether there is a public interest basis for finding impairment. The panel may think that by reason of R's misconduct, there remains a risk of repetition and of a real risk of harm to patient and public safety, and/or that there is a public interest reason to find impairment.*
38. *It is the NMC's submission that all three grounds apply, and the panel are therefore invited to find that R is currently impaired.'*

In addition to his written submissions, Mr Bardill asked the panel to consider that you breached the following duty from 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code):

'22 Fulfil all registration requirements

To achieve this, you must:

- 22.1 keep to any reasonable requests so we can oversee the registration process*
- 22.2 keep to our prescribed hours of practice and carry out continuing professional development activities*
- 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'*

You gave oral evidence to the panel under affirmation. You told the panel that you never intended to mislead and that you are sorry. You said that there is currently no misconduct as you have learnt from your past mistakes.

Submissions on impairment

You told the panel that you received a high level of training from the Home and have completed all relevant training from 2017 to 2020. You stated that you have been working with the public for several years and worked as a specialist nurse. You said that you intend to update your specialist training as soon as possible.

You told the panel that your working hours are now on target and that you have time sheets from Dovehaven Nursing Home. You said that you are now up to date with your practice and have been practising with no restrictions for a number of years. You stated that your manager is aware of the investigation, and you are under supervision with appropriate risk assessments in place.

You referred the panel to your Barchester Health Care '*Practical Assessments*' checklist dated 6 February 2020 and stated that this was evidence of induction and a week's training at Sutton Grange. You also referred the panel to an email you sent on 28 March 2017, which you described as an assessment you undertook for a service user at Oxen

Barn, The Priory. You further provided the panel with a general broad overview of other training completed, without specific detail.

You said that you have been open, honest and transparent whilst working in a team. You said that you promote this in order to ensure that colleagues trust your notes and documents. You told the panel that you have been working with colleagues with no complaints.

In response to questions about your future intentions, you said that you intend to remain in nursing but that you need to work your way back up to the position of a senior nurse as you do not feel confident at this point in time. You stated that you would hope to work as a registered nurse in end-of-life care in England and Ireland and that you have received a verbal job offer at Sutton Grange, subject to the outcome of these proceedings. However, the panel noted that in panel questioning, you informed the panel that you intend in future to split your work between Ireland and England, and did not make reference to this job offer again. You said that future employment could be made difficult due to complaints from Person B, who has been calling employers in an effort to discredit you.

When asked whether you accept the panel's finding of dishonesty, you said that you accept the finding even though it is difficult to do so.

In response to questions from the panel you stated that you were taken on as a specialist nurse at Sutton Grange, working in a position just below the deputy manager. You said that you were in charge of a team during the night shifts only. You told the panel that you were not terminated from any of your previous nursing roles, but rather that you resigned.

In response to panel questions, you clarified that you have not worked since 2020. You said that you have been unemployed since June 2020 when you left your last role to pursue a move to work in Ireland, which was unsuccessful. You said that you have chosen not to work since because of Person B's complaints to employers and prospective employers about you.

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

Decision and reasons on misconduct

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

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

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

22 Fulfil all registration requirements

To achieve this, you must:

22.1 keep to any reasonable requests so we can oversee the registration process.

22.2 keep to our prescribed hours of practice and carry out continuing professional development activities

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 appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel considered that the charges found proved relate to you behaving dishonestly, making inaccurate and incorrect declarations to prospective employers and the NMC on more than one occasion and over a period of eight years.

The panel concluded that taken individually, charges 1, 2 and 4 would not amount to misconduct. However, taken collectively, and in light of the findings of dishonesty in charges 3 and 6, the panel determined that your conduct amounted to a serious departure from professional standards. The panel was of the view that breaching the trust of the public, the regulator and your employers would be seen as deplorable by fellow practitioners and members of the public.

Having considered the charges, the panel was satisfied that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. 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 *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) 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 satisfied that all four limbs are engaged. The panel found that by applying to practise in a nursing role without the requisite practice hours and training, and by misleading your employers and the NMC, patients were put at risk of harm as a result of your misconduct. It determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that you had limited emerging insight, which developed following the panel's findings on the facts. The panel noted that you accepted the finding of dishonesty following questioning from Mr Bardill, but that this was vague and hesitant.

The panel was not satisfied from your evidence that you have a full appreciation of the level of your own dishonesty, the impact of your misconduct on patients, colleagues, the public and the reputation of the nursing profession, and what it means to be open and honest. The panel did not have sight of a reflective piece or any further evidence from you that indicates that you understand where you went wrong.

The panel noted that the misconduct in this case is difficult to address given the nature of the concerns, however, it was of the view that it was capable of being put right.

Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to address this dishonesty. The panel took into account your oral evidence of training completed in 2018 and 2020. The panel did not have sight of any

training certificates since 2018. It also took into account the various documents you provided which were of limited assistance to the panel.

The panel noted that you have not been employed as a nurse since 2020, and so there was no evidence before it of recent supervision or references relating to your practice. Further, the panel did not have sight of any evidence that your dishonesty has been addressed.

The panel was concerned that during your oral evidence under affirmation, you provided vague information which when questioned further, was either inconsistent or misleading.

In evidence you told the panel that you had worked for several years as a specialist nurse with no concerns about your practice, but when questioned you explained that you had worked in a number of different places for short periods of time. The panel was concerned that you had not worked consistently with the same colleagues over an extended period of time, and so if there were any concerns with your practice, honesty or integrity, they may not have been necessarily identified.

Further, at the outset of your evidence, you used language and terminology which gave the impression that you were still working as a nurse. However, when specifically questioned, you told the panel that you have not worked as a nurse since 2020.

In all the circumstances, the panel was of the view that there is a risk of repetition of your dishonesty. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because a member of the public would be concerned to learn that a nurse was dishonest to their regulator to renew their registration, and to prospective employers to secure employment as a registered nurse.

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

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

Sanction

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

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

Submissions on sanction

In the Notice of Hearing, dated 19 May 2022, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired.

Mr Bardill referred the panel to his written submissions on sanction:

INTRODUCTION

1. *It was submitted on behalf of the NMC that there is current and ongoing risk to patient and public safety if the Registrant ('R') is allowed to practice unrestricted, by reason of his misconduct.*
2. *It was further submitted that there was a public interest ground for finding misconduct and impairment by virtue of that misconduct.*
3. *The panel have now found misconduct and impairment and we have now reached the sanction stage.*
4. *The panel have found dishonesty present in part of the charges found proved, as mentioned previously in these proceedings and outlined in the written determination.*
5. *The Registrant, during his evidence at the misconduct and impairment stage, accepted dishonesty was present in his actions when it was put to him once and further clarified that this would include an intention. The panel have made note of this admission in their written decision.*
6. *The NMC submit that the overarching objective of the Panel is public protection, which is one of the grounds on which misconduct and impairment was found in addition to the public interest. In light of that, it is submitted that the appropriate sanction for these charges, is a Strike Off Order.*

THE NMC GUIDANCE

7. *When addressing the appropriate Sanction, the Panel may wish to have regard to the NMC guidance on Sanctions. It is submitted on behalf of the NMC that the following, from the NMC guidance titled 'Factors to consider before deciding on sanctions' (last updated 29/11/2021), should be taken into account:*

i. PROPORTIONALITY

Finding a fair balance between R's rights, and the overarching objective of public protection. The guidance states that panels should start by considering the least restrictive sanction, and then progress to the next more restrictive accordingly until such sanction is found that imposes the minimal restrictions on R whilst protecting the public in respect of the regulatory concern that is found to underpin the unfitness to practice.

ii. AGGRAVATING FEATURES

Any features that may make the case more serious. For example, if a nurse has put a patient at risk of harm, the case is more serious. It is stated in this guidance however, that even cover-ups or cultures of blame can amount to putting patients at risk of harm. The guidance goes on to give non-exhaustive examples of some features that may be aggravating:

- *any previous regulatory or disciplinary findings*
- *abuse of a position of trust*
- *lack of insight into failings*
- *a pattern of misconduct over a period of time*
- *conduct which put patients at risk of suffering harm.*

These and other aggravating features would point to a more restrictive sanction.

iii. MITIGATING FEATURES

Any features that suggest it is less serious, in other words, the opposite of the aggravating features. These features would point towards a less restrictive sanction.

The guidance goes on to give non-exhaustive examples of what may constitute mitigating features:

- *Evidence of the nurse, midwife or nursing associate’s insight and understanding of the problem, and their attempts to address it. This may include early admission of the facts, apologies to anyone affected, any efforts to prevent similar things happening again, or any efforts to put problems right.*
- *Evidence that the nurse, midwife or nursing associate has followed the principles of good practice. This may include them showing they have kept up to date with their area of practice.*
- *Personal mitigation, such as periods of stress or illness, personal and financial hardship, level of experience at the time in question, and the level of support in the workplace.*

The guidance goes on to say that a patient not suffering actual harm, or the reason for the patient not suffering harm, is “generally not a good mitigating factor”.

8. *The NMC guidance also states that the purpose of a Sanction is not to punish R, but to protect the public and address the risk. With that in mind, the guidance is clear that mitigation does necessarily carry the same relevance as it would in Criminal Proceedings.*
9. *The panel will have regard to any previous interim orders or sanctions against the Registrant. They will be aware that there is no interim order, and there have been no previous sanctions or findings against R in the present case.*

THE LAW

10. A sanction can also be used to deter others, other than in relation to the primary issue of public safety. In this instance, reasoning is particularly important to showing proportionality.

Brennan v Health Professions Council [2011] EWHC 41 (Admin)

11. At paragraph 47 of **Brennan** it states that:

“Where the purpose of sanction is to deal with issues other than the primary one of maintaining public safety, and is instead to provide deterrence to others, to maintain confidence in the profession's reputation and standards and in its regulatory process, the reasoning is particularly important in showing that the sanction is proportionate to the misconduct and for the individual. This important issue is dealt with by the mere statement of a conclusion. What was required was consideration of how the individual had responded, the sincerity and effectiveness of that response, the reality of repetition in view of his insight, if accepted, into how the practice of the profession related to his obligations to his employer in professional sport, the punishment inflicted by the sport's regulatory body, and the effect which various sanctions would have on the legitimate objectives of sanction for unfitness to practice. That did not occur. I was troubled that the reasoning included the comment that the sanction had been arrived at in part by the process of elimination given the weight that that puts on the starting point in the chain of reasoning. That reasoning, though not illegitimate, does require a very clear examination of whether the end result is proportionate, or whether the result would have been different if strike off had been considered first. This is especially important since there is no sanction available between a one year suspension and strike off. Strike off should be seen as ending the professional livelihood of the registrant as a physiotherapist, in this case, the only profession for which he is trained, and in which he has worked for many years. That does call for careful consideration of the evidence and reasoning, in what was an

unusual case.

Daraghmeh v General Medical Council [2011] EWHC 2080 (Admin)

12. *The above case concerns Conditions of Practice Orders and proportionality. In particular with having regard to the impact that any Conditions have on the Registrant, including whether those conditions make it impossible for the Registrant to Practice, essentially amounting to a Suspension in all but name.*

THE PRESENT CASE

13. *It is submitted that in the present case the following aggravating features apply:*

i. THE FACT THAT THE ACT WAS DISHONEST (Dishonesty)

It is submitted that dishonesty, being heavily interlinked with attitude and insight, is extremely difficult to put right and it is extremely difficult to know that it has been put right. With that in mind, the dishonesty of the charges found proved, in itself is an aggravating feature.

ii. THE FACT THAT THE DISHONESTY WAS ONGOING AND MULTIFACETED (A pattern of misconduct over time).

In the present case, it is submitted that the dishonesty was not only towards one person or party with one intention, but it was dishonesty that extended to various persons and consisted of both acts and omissions. It is submitted that the Registrant was dishonest in his dealings with the NMC, prospective employers, and employers, by his positive actions but also by his omissions later on. The ongoing and multifaceted nature of the dishonesty is,

therefore, it is submitted, an aggravating feature.

iii. THE REASON FOR THE DISHONESTY

The dishonesty was specifically motivated by a desire to entice into practice as a registered nurse. In many dishonesty offences, the dishonesty relates to some kind of gain, or a cover-up, which of course is serious. However in this instance, the dishonesty is directly linked to a desire to enter registered nursing practice in order to care for patients, whilst circumventing the requirements. Requirements that are there to protect patients and the public.

iv. LACK OF INSIGHT (Insight)

R does not display any particular insight into the charges found proved. Whilst there has been an admission of dishonesty, this came after the factual stage, which in itself does not suggest remediation or insight, as it suggests the Registrant went through that stage of proceedings knowing that the allegations were true.

v. THE RISK POSED TO PATIENTS & PUBLIC

By entering practice having not kept up to date with registration requirements or training, it is submitted that the Registrant posed a risk to patient safety, albeit it that there is no suggestion that patients came to actual harm.

In addition, as has been previously submitted, the dishonesty puts other members of staff at risk also, because medical notes, handovers and other aspects of the job that require an element of candour and trust, are tainted by the dishonesty in these charges.

In short, it is submitted that the dishonesty means may be dishonest in his practice, which opens those other staff members up to errors in their own practice.

14. It is submitted that in the present case, the following mitigating features apply:

- i. The Registrant has previously self-referred regarding a matter in which no regulatory intervention was needed. This demonstrates a certain level of awareness and honesty; at least in that particular incident (which was closed with no action taken).*
- ii. There are no previous Sanctions or NMC findings. Therefore he has a relatively long history of unblemished service.*
- iii. Charges 1 & 2 were admitted at the outset by R.*
- iv. Demonstration of some recent competency and some limited insight or remorse (albeit not with the dishonesty).*
- v. The Registrant has since admitted and accepted dishonesty.*
- vi. The Registrant at the material time was living under extremely difficult circumstances which affected both his personal and professional life. That situation is no longer the case.*

15. It is submitted that these are not exhaustive, and the Panel may find additional aggravating and mitigating features to which they will attach the appropriate weight accordingly.

AVAILABLE SANCTIONS

Caution Order

16. *It is submitted that in the present case, a Caution Order would not be sufficient to reflect the seriousness of the case or protect the public.*

Conditions of Practice Order

17. *It is submitted that a Conditional of Practice Order would not be appropriate to address the lack of insight and dishonesty, and therefore would not protect the public.*

Suspension Order

18. *It is submitted that a Suspension Order is not the appropriate sanction because it would not address insight or remediation. In short, for similar reasons as to why the Conditions of Practice Order is not appropriate, so to a Suspension Order is not.*

Strike Off

19. *It is submitted that in light of this matter relating to dishonesty coupled with a lack of insight, the only appropriate sanction to achieve the overarching objective of patient safety, and public protection, is a Strike Off Order.*

20. *It is submitted also, that the Strike Off Order would preserve public confidence in the profession and the NMC as a regulator, and provide a deterrence for others.*

CONCLUSION

21. *The Registrant has admitted to, and been found proven to have provided false, misleading or inaccurate information. This includes falsely declaring compliance with the revalidation requirements.*

22. *It is submitted, in particular in light of the panel's findings, that the Registrant's conduct is incompatible with continued registration. The dishonesty was committed to gain entry to the register that he should not have been allowed to*

revalidate and gain re-entry to. The Registrant's action undermined the integrity of that register; engaging significant public protection and public interest issues.

23. Consequently, it is submitted that owing to the nature and reason for the misconduct, the aggravating features, and the lack of remediation, a Strike Off Order is the only appropriate sanction to protect the public, and for the protection of the reputation of the profession and NMC as a regulator.

24. The panel are therefore invited to make a Strike-Off Order in light of the above submissions.'

You told the panel that you did not have any submissions or comments to make at this stage.

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:

- Systematic and long-standing dishonesty which occurred in a range of circumstances
- Risk of harm to patients as the protections put in place to ensure that nurses are competent were circumvented
- Dishonesty to your regulator
- Direct personal gain from the dishonesty

- Minimal insight into failings

The panel also took into account the following mitigating features:

- Previous good character
- Some insight into obligations to the regulator shown in the past from a previous self-referral
- Some admissions made at the outset and in the course of these proceedings
- Personal mitigation from difficult personal circumstances at the time of the misconduct

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 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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. 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 dishonesty identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of

conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel considered that there was more than one instance of misconduct in your case. It determined that by making a conscious decision to repeatedly mislead your regulator and prospective employers over a sustained period, you exhibited a deep-seated attitudinal problem that condones dishonesty. The panel was of the view that whilst there was no evidence of repetition since the referral was made, the misconduct itself was repeated over the period of eight years. It also took into account that during the course of these proceedings, you provided vague information to the panel which when questioned further, was misleading. The panel further noted its earlier finding that your insight at this stage is only just starting to emerge, and it concluded that you pose a high risk of repeating the behaviour.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel concluded that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

The panel was concerned that you did not appear to understand the seriousness of the regulatory concerns. You sought to renew your registration on the NMC register when you had not met the requirements to do so. The panel determined that the regulatory concerns about you raised fundamental questions about your professionalism. The panel further noted that after having misled two employers, you sought to take on work in an area you were not familiar with, which in the panel's view evidenced a lack of insight into the risk that you may pose to patients. The panel also took into account that you did not complete your preceptorship and that you had very limited periods of practice throughout your nursing career.

The panel was of the view that public confidence in nurses could not be maintained if you were not removed from the register. In light of the risk of repetition identified, the panel was concerned about how your dishonesty might manifest itself in any future nursing practice. The panel concluded that a striking-off order is the only sanction which will sufficiently protect patients and members of the public and maintain professional standards.

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were serious. It determined that to allow you to continue practising, particularly knowing that you remained on the register for a period of six years after having misled your regulator and using that registration to seek and gain employment, would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Bardill. He submitted that an interim order was required on public protection and public interest grounds for the same reasons given for the substantive striking-off order. Mr Bardill invited the panel to make an interim suspension order for a period of 18 months to cover any appeal period until the substantive striking-off order takes effect.

You were given the opportunity to make submissions but did not do so at this stage.

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 ensure that you cannot practise without restriction before the substantive striking-off order takes effect. This will cover the 28 days

during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.