

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

**Substantive Hearing
1 – 4 February 2022
18 March 2022**

Virtual Hearing

Name of registrant:	Carol Marie Molloy
NMC PIN:	99I1093S
Part(s) of the register:	Registered Nurse – Adult 2002
Area of registered address:	Scotland
Type of case:	Misconduct
Panel members:	Melissa D'Mello (Chair, Lay member) Janet Richards (Registrant member) Suzanna Jacoby (Lay member)
Legal Assessor:	Juliet Gibbon
Hearings Coordinator:	Jumu Ahmed
Nursing and Midwifery Council:	Represented by Zahra Evans, Case Presenter (1 - 4 February 2022 Represented by Michael Smalley, Case Presenter (18 March 2022)
Miss Molloy:	Present and represented by Sam Oestreicher (Unison)
Facts proved:	Charges 1, 2(1), 2(2) and 2(3)
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Suspension order (3 months) with review
Interim order:	No order

Details of charge

That you being a Registered nurse

1. At the request of Avondale Care Home (Priory Group) ["Avondale"], then employing you as a probationer, provided a letter to Avondale dated the 27th November 2018 purporting to come from NMC Registrations confirming disclosure of two convictions when in fact it did not come from the NMC. **[PROVED]**

2. Your providing the letter referred to in Charge 1 to Avondale was dishonest in that:
 - (1) You knew the letter did not originate from the NMC and was not genuine. **[PROVED]**

 - (2) You had forged the letter **[PROVED]**

 - (3) You intended Avondale's Nursing Manager to rely on the letter as genuine and confirm your employment or recommend its confirmation to more senior officers in the Priory Group **[PROVED]**

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

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

Ms Evans, on behalf of the Nursing and Midwifery Council (NMC) made a request that the hearing be held partly in private. Specifically, where references had been made to your personal life and a third party's private life. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Oestricher, on your behalf, supported the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel accepted the advice of the legal assessor and determined that, where references had been and may be made to your personal life and/or a third party's private life, those parts of the hearing would be held in private, as and when such issues may arise.

Background

The charges arose whilst you were employed as a registered nurse by the Priory Group.

In October 2018, you had applied for a post at Avondale Care Home ('Avondale'). During the course of the application process, you disclosed to your prospective employers that you had two previous convictions for offences of driving with excess alcohol.

As part of the Avondale's governance process, they had requested documentary evidence from you that the NMC was aware of the offences and that you were safe to practise.

It is alleged that you had subsequently produced a copy of a letter which you stated had been provided by the NMC. Enquiries were made by the Priory Group with the NMC to confirm its validity. It was suggested by the NMC that the letter was not genuine. The NMC concluded that the letter had not originated from the NMC.

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 Evans and by Mr Oestreicher.

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:

- Witness 1: Employed by the Priory Group as
Nurse Manager;
- Witness 2: NMC RAST Team Manager -
Registrar and Appeals Support;

The panel heard live evidence from the following witness called on your behalf:

- Witness 3: Regional Manager for H1
Healthcare;

Furthermore, the panel had signed witness statements from Witness 1 and Witness 2. The panel also received an agreed, signed witness statement from Ms 4, who is your NMC case coordinator.

The panel heard evidence from you under oath.

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 and submissions provided by Ms Evans and Mr Oestreicher.

You denied all the charges.

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

Charge 1

That you being a Registered nurse

1. At the request of Avondale Care Home (Priory Group) ["Avondale"], then employing you as a probationer, provided a letter to Avondale dated the 27th November 2018 purporting to come from NMC Registrations confirming disclosure of two convictions when in fact it did not come from the NMC.

This charge is found proved.

In consideration of this charge, the panel had regard to Witness 1 and Witness 2's oral evidence and signed witness statements, and Ms 4's signed witness statement.

The panel took into account Witness 2's statement in which he had stated:

'My reasons for considering the letter to not be genuine were based on the style, layout and content of the letter and these were that;

- *To convey information of the nature contained in the letter, we would not have sent a separate letter, but would have forwarded the original 'accept' letters.*

- *Any letters sent by us would say who had made the decision. This letter states the decision was considered by “the registrar or assistant registrar”. We would not use that terminology.*
- *The letter is signed off ‘NMC Registrations’. We would never sign a letter like that. It would have the signature block of either my colleague or I and would be signed.*
- *The style and font of the ‘NMC’ logo at the bottom of the letter is only used on emails, not on letters.’*

The panel took into account Witness 2’s oral evidence in which he had stated that the letter would be signed off as either ‘Registrar’ or ‘Assistant Registrar’ as opposed to: *‘Thank you, NMC Registrations’*. The panel also took into account Witness 2’s oral evidence where he had stated: *‘I would never send a new letter confirming it because of GDPR, it might just be a covering letter signed by myself or another senior colleague i.e., registrar or assistant registrar’* and that he would not transcribe a letter but would pass on a copy of the original letter.

The panel had regard to Witness 2’s oral evidence where he stated that the words *‘Road Traffic Act 1988, section (3) (5)’* would not have been set out in the letter as the NMC would not include reference to the specific Acts.

Further, the panel took into account Witness 2’s oral evidence where he stated that your two ‘accept’ letters regarding your two convictions were stored in the WISER and document storage system respectively. Witness 2 told the panel that only the Registrar Appeals and Support Team (RAST) and the NMC lawyers have access to the documents storage system as it holds information about registrants’ health and character. He said that

the NMC's Contact Centre would not have access to this information. Witness 2 explained that any enquiries of this nature are forwarded from the Contact Centre to the RAST to deal with, and that any response would be sent in a letter signed by the person who actioned it.

The panel also had regard to Witness 2's written statement which stated:

'[...] the information would then be posted out to their register [sic] address and not sent by insecure email. When a response was sent to an enquiry of that nature, this would also be recorded in the 'Memo pad' section of the Wiser system, 'Wiser' being the NMC's current computer system for storing the Nursing and Midwifery register and associated information.'

Further, the panel also took into account the oral evidence of Witness 2 in which he explained that the NMC's WISER document system includes a memo pad which records the details of any telephone calls or communication with registrants. He stated that the Contact Centre team would be able to look at any records of communication held on the WISER system. If a letter had been sent, a note would be recorded so that registrants can be updated in relation to their enquiries. However, if no note was present, then the Contact Centre would communicate with the RAST team.

Further, Witness 2 stated that, in response to such an enquiry, he would have resent the original 'accept' letters, rather than a different letter with the information contained in it. The letters would have been sent to your registered email address via Egress or to your registered postal address. However, the panel noted that an email was sent to you by a RAST staff member on 7 December 2018, which was not password protected nor encrypted.

The panel took into account Witness 2's statement where he described the various other reasons why *'[...] I am able to confidently state that the letter did not originate at the NMC'*. With regard to your email of 22 November 2018, he stated that:

'... this email has gone to the main NMC Enquiries mailbox, titled 'UKenquiries@nmc-uk.org'. The email requests information regarding convictions. This information could not be provided by the staff who administer that mailbox. They would not have the necessary access to the information, and it is not their role to answer enquiries of that nature instead, enquiries of that nature would always be passed to my department.

The email would be forwarded on to your departmental mailbox, titled 'RAG support'. There are only 10 staff in my department, and that mailbox is administered by 2 admin staff members in my department. Again, they would not respond to an email of that nature, but would forward it on to me to deal with.

If I was absent, on holiday for example, an enquiry of that nature would only ever be passed to one of my senior colleagues.

We do not have any standard operating procedure for dealing with our business, but we do operate within the guidelines of the GDPR and with data security as a central consideration.'

...

The term 'accept letter' is used by us to refer to a particular type of letter sent to the registrants who, at the time that they have applied to renew their NMC registration, they have disclosed a criminal conviction to the NMC. The letter is sent to the registrant after the circumstances of the conviction have been considered and it has been decided by the registrar, or the assistant registrar that their application can be 'accepted'.'

The panel had sight of the two detailed, two page 'accept' letters that had been sent to you dated 11 March 2015 and 8 January 2018. The panel noted that these two letters had

been re-sent to you by email on 7 December 2018. It also noted that this had not been by secure email. It appeared to the panel that the letters had been sent to you in response to the requests in your email of 22 November 2018.

The panel took into account Ms 4's written statement and the documentation provided by her in relation to searches undertaken to ascertain whether an email and letter had been sent to you by the NMC on 27 November 2018. It noted that there was no evidence that an email was sent out to you with the attachment of the letter.

The panel noted your evidence that the letter of 27 November 2018 had been attached to an email sent to you by the NMC on the same day; that you had printed the attachment and deleted the covering email on that day and that you denied acting dishonestly.

It also noted the evidence of Witness 3 that he considered you an excellent employee and an honest person.

The panel accepted the evidence of Witness 2 and was of the view that his oral evidence was mainly consistent with his witness statement. While the panel noted that Witness 2 readily acknowledged that the email from the NMC on 7 December 2018 had not been sent to you by secure email, and hence this did not accord with the processes he had described, the panel did not find that this undermined Witness 2's evidence. The panel determined that the letter provided by you to the Care Home was not consistent with the format, content, and style that the NMC would send out.

Further, the panel determined that emails and letters sent to you would be recorded on the NMC system and it found that there was no record of any such email or letter relating to 27 November 2018. The panel noted that there was no burden on you to disprove the evidence. However, it also noted that you were unable to produce the covering email containing the letter of 27 November 2018 that you had stated that you had received from the NMC.

The panel was therefore of the view, that on the balance of probabilities, it is more likely than not that you as a registered nurse at the request of Care Home provided a letter to Avondale dated the 27 November 2018 purporting to come from NMC Registrations confirming disclosure of two convictions when in fact it did not come from the NMC. The panel, therefore, found charge 1 proved.

Charge 2 (1)

That you being a Registered nurse

1. Your providing the letter referred to in Charge 1 to Avondale was dishonest in that:
 - 1) You knew the letter did not originate from the NMC and was not genuine.

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence, Witness 1's and Witness 2's oral evidence and witness statements and Ms 4's witness statement. It also accepted the advice of the legal assessor, and in particular, it had regard to the qualified good character advice that was given.

The panel took into account your oral evidence where you had stated that you believed that the letter had come from the NMC and that you gave it to your new employer on that basis. The panel noted that you had stated that you had deleted the covering email with the letter attached and that were unable to retrieve the email from your 'deleted box' in your email account. The panel noted your oral evidence in which you stated that your new employer's compliance team had expressed concerns about the authenticity of the letter within one to two weeks of you giving it to Witness 1. You told the panel that you had checked the 'deleted' items in your email when asked for the email by your new employer and had not been able to retrieve it.

The panel further noted the evidence you had provided from your communication with Google which stated that *'When you delete a message, it stays in your Bin for 30 days.'* The panel noted that your new employer's request to retrieve the email was made within 30 days of the email being deleted by you on 27 November 2018.

The panel also took into account Witness 1's oral evidence in which he had stated that you had told him that you searched over the following fortnight for the covering email with the letter being attached, however that you were unable to do so.

The panel took into account Witness 1's oral evidence in which he stated:

'Carol maintained it was a genuine document and she tried to retrieve the email it came from but was unable to do so.'

The panel had regard to its reasons at Charge 1 above and determined you were unable to retrieve the covering letter as requested by Witness 1 as the letter had not originated from the NMC.

The panel was therefore satisfied on the balance of probabilities that you knew that letter did not originate from the NMC and was not genuine. It was also satisfied that the ordinary decent person would consider this to be dishonest. The panel was satisfied, on the balance of probabilities, that you had acted dishonestly. Therefore, the panel found Charge 2(1) proved.

Charge 2 (2)

That you being a Registered nurse

1. Your providing the letter referred to in Charge 1 to Avondale was dishonest in that:
 - 2) You had forged the letter

This charge is found proved.

In reaching this decision, the panel took into account your oral evidence, Witness 2's oral evidence and witness statement and the documentation provided. It also accepted the advice of the legal assessor, and in particular, it had regard to the qualified good character advice that was given.

The panel took into account Witness 2's written statement on how the format, content and style that the NMC use. It determined that the letter you provided to the Care Home was not consistent with this. Therefore, for the same reasons as in Charge 1, the panel determined that the letter did not come from the NMC.

The panel was therefore satisfied on the balance of probabilities that you had forged the letter that purported to come from the NMC. It was also satisfied that the ordinary decent person would consider this to be dishonest. The panel was satisfied, on the balance of probabilities, that you had acted dishonestly. Therefore, the panel found Charge 2(2) proved.

Charge 2 (3)

That you being a Registered nurse

1. Your providing the letter referred to in Charge 1 to Avondale was dishonest in that:
 - 3) You intended Avondale's Nursing Manager to rely on the letter as genuine and confirm your employment or recommend its confirmation to more senior officers in the Priory Group

This charge is found proved.

In reaching this decision, the panel took into account Witness 1's and Witness 2's oral and written evidence and Ms 4's witness statement. It also accepted the advice of the legal assessor, and in particular, it had regard to the qualified good character advice that was given.

The panel noted that you were asked by Witness 1 to provide a letter confirming that the NMC was aware of your two driving convictions. The panel noted that when this was requested, you had already started working at Avondale, and your employers were content with your clinical nursing practice and performance.

The panel took into account Witness 1's written statement in which he stated:

'Our compliance team advised me that subject to carrying out a risk assessment and ensuring there was a support plan in place, Carol could start. She started on probation around mid to late November 2018, and her performance was OK. She performed as expected clinically, and she was courteous, competence and professional. There were never any issues with her clinical practise.'

The panel also took into account Witness 1's oral evidence in which he stated that:

'She worked well for two weeks, staff were positive about her, she very professional, efficient and courteous to the patients and appeared to be an excellent nurse.'

The panel determined that when you had provided the letter to Witness 1, you had intended for him to rely on that letter as genuine in order to confirm your employment or recommend its confirmation to more senior officers in the Priory Group. The panel was of the view that you knew the letter was a forgery and that such conduct would clearly be seen as dishonest by ordinary decent people. The panel was satisfied, on the balance of probabilities, that you had acted dishonestly. It therefore found charge 2(3) proved.

Fitness to practise

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

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

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

Ms Evans provided written submissions to the panel on misconduct and impairment. Mr Oestreicher, on your behalf, agreed the legal principles set out in that document.

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.*'

Ms Evans invited the panel to find that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Evans identified the specific, relevant standards set out in the Code which, she submitted, you had breached. Ms Evans submitted that your dishonest conduct fell short of what would be proper in the circumstances.

Ms Evans submitted that a registered nurse being honest is integral to the standards expected of a registered nurse and central to the Code, which you had fallen seriously short of. She submitted that your action in providing a letter to Avondale, purporting to come from NMC Registrations, confirming the disclosure of two convictions for driving with excess alcohol, when in fact it did not come from the NMC, was dishonest. She submitted that such behaviour undermines public confidence in the profession and is serious as the misconduct also involved being dishonest with your employer and your regulator. She further submitted that, in all the circumstances, you had departed from good professional practice and the facts as found proved are sufficiently serious to constitute serious misconduct.

Mr Oestreicher submitted that you accept the panel's findings and accept that the charges found proved by the panel amounts to misconduct.

Mr Oestreicher submitted that the NMC's reference to a breach of Code 20.8 did not apply as, in his submission, it is directly aimed at people who are working with students, nursing associates, and those in mentoring.

Submissions on impairment

Ms Evans moved on to the issue of impairment and addressed the panel on the need to have regard to 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. Ms Evans referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

In Ms Evan's written submissions, she submitted that limbs b, c and d of the *Grant test* were engaged in respect of past conduct.

Ms Evans submitted that current impairment can be found either on the basis that there is a continuing risk or that the public confidence in the nursing profession and the NMC as regulator would be undermined if such a finding were not made.

Ms Evans submitted that with regards to the risk of repetition, it is understood that you are currently employed as a registered nurse through an agency. Therefore, due to the nature of the allegations, there is a risk of repetition of the misconduct. She noted, however that your current employer had told the panel, under oath, that he found you to be an honest person.

Ms Evans submitted that the allegations raise concerns about your professionalism and honesty. She submitted that the seriousness of the misconduct is such that it calls your professionalism into question. She submitted that this brought the reputation of the profession into disrepute.

Ms Evans submitted that you had not provided information as to what steps you had taken personally and professionally to ensure that your dishonest behaviour would not be repeated. Therefore, she submitted that it cannot be said that you have full insight or that you have fully reflected on the impact that your actions have had.

Therefore, Ms Evans submitted that a finding of impairment is required on public interest grounds.

Mr Oestreicher submitted that you accept that there is current impairment on public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments, as set out in Ms Evans' written submissions. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Cheatle v General Medical Council* [2009] EWHC 645), *Cohen v General Medical Council* [2008] EWHC 581 (Admin), *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that your actions fell significantly short of the standards expected of a registered nurse and breached the following provisions of the Code:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 - act with honesty and integrity at all times ...

20.8 - act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel determined that your actions did fall short of the conduct and standards expected of a nurse. Further, it determined that your dishonesty breached

fundamental tenets of the Code. Therefore, your dishonest behaviour 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 *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) ...
- b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found limbs b, c and d were engaged in the *Grant* test in respect of past misconduct. The panel did not find limb (a) engaged as there is no evidence of any concerns with your clinical practice.

The panel determined that your misconduct had breached fundamental tenets of the nursing profession and had brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty as serious.

In relation to your insight, the panel did not have any information before it which addresses your insight with regard to the impact your actions would have had on your employer, the nursing profession and the wider public as a whole. Therefore, the panel was of the view that you had not demonstrated any insight into your misconduct.

In considering whether you have strengthened your practice, the panel noted that it did not have any evidence of this before it. It bore in mind that dishonesty is often more difficult to remediate than clinical concerns. However, it noted that, in the particular circumstances of your case, it can be remediated.

The panel also took into account the questions identified in *Cohen v General Medical Council*, namely whether the conduct which led to the charges is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

The panel was satisfied that the misconduct in this case is capable of being addressed. The panel determined that the misconduct was at the lower end of the spectrum of dishonesty. The panel noted that the content of the fraudulent letter was correct in so far as it referred to your two driving with excess alcohol convictions. It noted that the information contained in the letter was consistent with the convictions you had declared to the NMC. It also considered that you had disclosed these convictions to Avondale via the Protecting Vulnerable Groups (PVG) scheme and at interview. However, the panel did not have any evidence before it to determine whether or not you have taken steps to strengthen your practice or whether you have gained insight into the misconduct.

The panel considered that there is a risk of repetition because of your lack of insight and, therefore, subsequent full remediation. However, the panel took into account that this incident occurred over three years ago, and there is no evidence to suggest that this behaviour has been repeated since. The panel also took into account that your current employer considers you to be an honest person. However, because of your lack of insight and full remediation, the panel determined that there is a low risk of repetition. The panel, therefore, found that limbs b, c and d of the *Grant test* in respect of past conduct only.

As there was no evidence of any concerns with your clinical practice, the panel determined that your fitness to practise was not currently impaired on public protection grounds.

The panel bore in mind the overarching objective of the NMC 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 public confidence in the profession would be undermined if a finding of impairment were not made in this case. Therefore, the panel determined that your fitness to practise is impaired on the grounds of public interest only.

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

Decision and reasons on interim order

Ms Evans told the panel that no interim order was currently in place. She did not make an application for an interim order.

Mr Oestreicher submitted that an interim order was not necessary.

The panel considered whether to make an interim order. It took into account that this is a public interest case and that there are no public protection concerns. It took account of the guidance provided by the NMC when imposing interim orders that are otherwise in the public interest and noted the case of *R (Sheikh) v General Dental Council* [2007] in which it was stated that *'it would be a relatively rare case where a ... order will be made on an interim basis on the grounds that is in the public interest.'*

The panel considered the potential impact on you of imposing an interim order and decided that the consequences would be disproportionate to the risk at this stage of the proceedings.

The panel determined that an interim order was not necessary at this stage in the proceedings.

The hearing was adjourned at the end of day 4 during panel deliberations at the sanction stage.

The hearing resumed on 18 March 2022.

Sanction

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

Submissions on sanction

You gave evidence under oath.

You read out your witness statement dated 4 February 2022, which stated:

'I Carol Marie Molloy accept all the charges mentioned in the above case and admit at this late stage that I did regretfully, stupidly& selfishly hand that particular document which hadn't been provided by the NMC to Avondale Care Home. [sic]

There is no justification for this action and in bringing the Nursing & Midwifery Council's reputation into disrepute & breaching its code of conduct. [sic]

[PRIVATE]. When The priory kept asking me to provide proof from the NMC I did contact the NMC but hadn't heard anything back. The manager of Avondale had informed myself that until I provided it I wouldn't be able to work any shifts.

[PRIVATE]. [sic]

Once denying the allegation I felt there was no way back for me to tell the truth, I was terrified I would lose my registration & nursing career, I was ashamed of myself as this was & is totally out of character of me, i didn't know what to do my priority at that time was shadowed with keeping a roof over my sons head. [sic]

My actions were truly unacceptable of what is expected of me as a registered nurse, not only that but because of my dishonesty I have wasted important peoples valuable time: [sic]

Mr Oestreicher, Miss Evans, Miss Ahmed, Miss Richards, Miss D'Mello, Miss Jacoby Miss Gibbon, Mr Bidston, Mr Cullion.

And everyone else involved in this hearing (apologies if i have left anyone out) and for that I am truly sorry. Apologies at this stage just doesn't seem enough & I'm willing to face up to my actions whatever the consequences may be. [sic]

Thank you for taking the time to hear this submission & again I apologise profusely for lying, bring the NMC reputation into disrepute & not doing what is expected of me as a registered nurse. I'm ashamed of myself, embarrassed & disgusted. I try to show my son, co-workers etc good morals when I haven't done this myself & for that that I am regrettably sorry. [sic]

Carol Molloy, 4 February 2022

99i1093S'

You told the panel that the nursing career is not just a job for you, but a desire of yours to look after people and providing the best care for them, however big or small. You told the panel that you get great satisfaction from your job, and there is nothing like the feeling after a hard day, of knowing that you have helped someone, which makes you feel that you have accomplished something. You told the panel that the nursing profession is a

family, and this profession is all that you know. You told the panel that you fought hard to keep your registration, even with two convictions for driving with excess alcohol, because you want to continue with nursing and that you had declared these at the time to the NMC. You told the panel that your desire to be a registered nurse is still very much present, and it had been a journey for you and your family. You told the panel that there have been highs and lows in your career, and to think that it may come to an end would be catastrophic for you.

In response to the panel's question about your state of mind at the time, you said that when you forged the letter and gave it to Avondale, you panicked and all you could think about was paying your bills and mortgage, what your son had gone through, and losing your home. You told the panel that you were terrified and not thinking straight. You told the panel that you came out of an abusive relationship at the time of your misconduct, and your anxiety levels were not great. You said that you were '*absolutely terrified*' of losing your career that you worked so hard for, and you did not want to lose that. You told the panel that what you have learnt from this experience was that honesty is key. You said that you have always been honest with all your affairs, even with your two convictions for driving with excess alcohol, you were upfront with the NMC and your employers. You told the panel that with this lie and forgery, you have put your career on the line because of the dishonesty. You told the panel that you are distraught about this, especially where honesty is expected by your regulator, your patients and the wider public.

When questioned by the panel as to why honesty is important to you, including in the eyes of the public and patients, you said that you are acting as an advocate and they need to be able to place their trust in you; that you show that you are committed to the profession, and you are a role model. You told the panel that you have the Code of Conduct and standards to keep you in line and that is what the public expects from you.

When questioned by the panel as to how each of the sanctions would affect you personally, you said that any sanction would affect you catastrophically. You told the panel that [PRIVATE] and that your '*reputation would be shattered*'. You told the panel that the

thought of your nursing career coming to an end is catastrophic, but you acknowledge that you have done wrong, and you wish to face up to and accept whatever sanction will be given to you. You told the panel that you would be grateful for anything to continue nursing.

In response to the panel's question as to why you chose to admit to the charges at this sanction stage, you said that the panel had found you guilty of them and that you could not continue lying. You told the panel that the past few years had been torture as you had felt that you could not tell the truth. You said that at this stage, you are expecting to lose your registration and be removed from the register and felt that you had to put an end to this now.

In response to the panel's question as to why you continued to lie in the facts stage especially as you were under oath when giving your oral evidence, you said that you did not think and could not see a way out. You told the panel that you were terrified, and you panicked. You told the panel that your actions were dishonourable to the panel, to the NMC and to your representative. You told the panel that there is no excuse or justification for your conduct.

The panel referred you to your statement on 4 February 2022 which stated: *'When The priory kept asking me to provide proof from the NMC I did contact the NMC but hadn't heard anything back'* and had asked for you to explain it in more detail. You told the panel that you were not sure when your manager had asked for you to provide the evidence that the NMC were aware of your two convictions for driving with excess alcohol. You said that you did contact the NMC but that you did not hear anything back. You told the panel that your manager had contacted you again asking whether you heard anything from the NMC. You responded to him letting him know that you had not, to which he replied telling you that you needed to keep on top of it because it could take a long time. You told the panel that your manager had contacted you again via email and had told you that the Priory were not happy for you to continue with shifts until you provided evidence that the NMC were aware of your two convictions. You told the panel that at that point, your finances

were not great, and you were in despair, and you were worried about paying for your bills. You told the panel that this had clouded your judgement. You told the panel that your manager at the Priory had said that he would need to stop you from working until you had provided the evidence.

Ms Evans invited the panel to impose a six-month suspension order with a review. She submitted that this would be the only suitable sanction to address the regulatory concerns.

Ms Evans submitted that the aggravating factors in this case include: an informed member of the public would interpret your actions as unacceptable and that this case involved misconduct so serious that it would bring the profession into disrepute. She submitted that the mitigating factors include you had always disclosed the convictions to the NMC, and you had admitted to the allegations, at this late stage, and shown evidence of insight and remorse into your actions.

Ms Evans submitted that a caution order is used to address concerns at the lower end of the spectrum and, therefore, was not a suitable sanction in this case. She submitted that a conditions of practice order is usually put in to place to address specific concerns, which must be measurable, workable, and proportionate. She submitted that there are no conditions which could address your actions of providing the letter to Avondale purporting for it to come from the NMC.

Ms Evans submitted that a suspension order is the appropriate sanction where the misconduct is not fundamentally incompatible with continuing as a registered nurse in that the public protection and public interest can be satisfied by a less severe outcome than permanent removal from the register. She submitted that your attitude was of a concern as your case involves dishonest conduct. However, she submitted that there was no evidence of repetition of behaviour since the incident. She submitted that Witness 3 had attended the hearing, who is your current employer, and provided a positive employer's reference in regard to your role as a registered nurse within an agency providing bank staff. She informed the panel that there have been two more positive character references.

Ms Evans submitted that providing a forged document to your employer purporting to come from the NMC was a breach of the level of professionalism expected of you as a registered nurse. She reminded the panel that you had previously disclosed to the NMC that you had two convictions for driving with excess alcohol. She submitted that you had now made admissions to the charge and that there is evidence of emerging insight in relation to the misconduct.

Ms Evans submitted that the public confidence in the profession and the NMC's role as an effective regulator would not be maintained if a six-month suspension order, with review was not imposed. She submitted that the serious nature of the misconduct found proved, which included dishonesty, warranted a six-month suspension order with a review.

In Mr Oestreicher's closing submissions he submitted that this was a tragic case in terms of the mischief behind the forgery as there was none intended. He submitted that this misconduct was used as a vehicle to inform your current employer of your two convictions, which you had previously told the NMC about. He told the panel that this was not a punitive process and is not a case where anything would be gained if the panel were to impose a sanction that was over severe and not objective with regards to your misconduct and your current impairment. He urged the panel to be proportionate and to avoid any collateral damage to your family. [PRIVATE].

Mr Oestreicher submitted that your misconduct did not involve patients, and therefore, there was no patient harm. He submitted that this is a public interest only case. He said that it was understandable that the NMC was asking for a six-month suspension order. He submitted, however, that there was a material change in the circumstances of the case at this late stage as you had now made admissions to the charges.

Mr Oestreicher invited the panel to impose a five-year caution order. He submitted that this would have an impact on you as this is a long period. However, if the panel were to impose a suspension order, then it should be for a period of three months rather than six

months, as suggested by the NMC. He submitted that this was a long time for a nurse without an income. Mr Oestreicher further submitted that a strike off would be wholly disproportionate as the misconduct was in the less severe level of dishonesty.

Mr Oestreicher submitted that an order should be imposed with a review. This was because your insight was beginning to emerge and that the panel should be rest assured that you had taken lessons on board. He submitted that you have taken a more comprehensive reflection on the consequences. He further submitted that this would be the appropriate nature of the dishonest conduct.

Mr Oestreicher submitted that you are a good nurse, and that the public would be deprived of your nursing services if you were suspended for a long time or struck off. He submitted that if the panel were to impose a five-year caution order, *'the NMC would not have to waste more resources and trade union time in this case'*.

Mr Oestreicher submitted that *'this was the most stupid dishonesty which was totally unnecessary'*. He submitted that the mitigating features were that this was a one-off incident and that there was no risk of harm to patients.

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. 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 found the following aggravating feature:

- You attempted to cover up your dishonest conduct over a lengthy period.

The panel took into account the following mitigating features:

- You made full and frank admissions at the sanction stage of the hearing;
- You apologised, showed remorse and you have shown insight into the impact of your misconduct on patients, colleagues, the public, the profession and your regulator;
- The forged document contained factually correct information about your two convictions of which the NMC was already aware; and
- Personal and financial hardship at the time of the misconduct.

The panel took into account your written statement and oral evidence under oath on 4 February 2022 when looking at mitigating features:

[PRIVATE]. When The priory kept asking me to provide proof from the NMC I did contact the NMC but hadn't heard anything back. The manager of Avondale had informed myself that until I provided it I wouldn't be able to work any shifts.

[PRIVATE].' [sic]

Whilst the panel was concerned that you had lied under oath, it considered that it took a lot of courage for you to admit your dishonesty at this stage in proceedings. Furthermore, the panel noted that you acknowledged that you had been carrying this burden for some time and decided to take responsibility for your actions, albeit at a late stage.

The panel considered the NMC's guidance on dishonesty, SAN-2. The panel determined that, at the time (2015 and 2018), you had disclosed to the NMC your two convictions for driving with excess alcohol and had received confirmation that the NMC deemed that these did not affect your fitness to practise. Mr 1, in oral evidence, had told the panel that you had disclosed these two convictions to your prospective employer in both your application form and during the interview process. The panel accepted that your

misconduct took place in the context of difficult personal circumstances and that it occurred *'in a moment of panic'* when you attempted to reproduce the content of two letters that you had previously received from the NMC. Furthermore, the panel noted that this occurred in circumstances where you had already requested copies of the letters from the NMC, and your requests had not been dealt with immediately. In his oral evidence, Mr 1 had described to the panel your 'zealous' efforts to try and obtain the information from the NMC and that he had witnessed your attempts to do so. The panel noted that Mr 1 had informed you that, unless the NMC letters were produced promptly, you would be prevented from working further shifts. The panel noted that this loss of earnings would have placed you in a precarious financial and personal position. In the light of the foregoing, and in the context of an otherwise unblemished career with no previous disciplinary findings, the panel considered your dishonest conduct in providing your employer with a forged letter to be a one-off spontaneous incident, with no risk to patients and motivated by incidents in your private life.

The panel was of the view that the mitigating factors outweighed the aggravating factors in the particular circumstances of your case. [PRIVATE].

The panel noted that in your written statement on 4 February 2022, you had made full and frank admissions at the sanction stage and had expressed remorse and had apologised to the panel, your representative, the NMC case presenter, the Hearings Coordinator, the Case Coordinator and to the witnesses.

The panel was of the view that, notwithstanding the timing of your full and unequivocal admissions, you demonstrated good insight as you apologised and spoke about the impact your misconduct had on your employer, the public and the NMC as the regulator in your oral evidence on 4 February 2022 and what the public expected from you as a registered nurse. It found that you gave detailed answers to the panel's question as to why honesty was important and the impact on the public. It also noted that you had stated that you needed to be a role model and that the public would expect you to be an honest nurse.

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, 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, while it had determined that your misconduct was at the lower end of the spectrum of dishonesty, dishonesty is always considered to be serious misconduct and, in the panel's view, a caution order would not satisfy the public interest. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of general incompetence;*

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 panel accepted that there are no concerns regarding your clinical practice, work ethic, or patient care. It determined that the misconduct identified which included dishonesty in this case was not something that can be addressed through conditions. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately satisfy the public interest ground.

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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel determined that this was a single incident of misconduct with no evidence of deep-seated attitudinal problems; indeed, the misconduct was 'out of character' for a nurse who was described as honest by her current employer. The panel also found that there has been no evidence of repetition of behaviour and considers that you have demonstrated good insight and remorse and do not pose a significant risk of repeating behaviour.

The panel also took into account the very positive testimonials from your previous and current employers attesting to your nursing skills and customer care.

In Mr 1's witness statement, he said:

' ... She started on probation around mid to late November 2018, and her performance was OK. She performed as expected clinically and she was courteous, competent, and professional. There were never any issues with her clinical practise ...'

In Mr 1's oral evidence, he said:

'... the staff were very positive about her; she was very professional, very efficient and very courteous to the residents and would certainly appear to be an excellent nurse ...'

In Mr 3's written character reference for the NMC proceedings, he said:

'I can confirm throughout the employment of Carol Molloy that she has been reliable, trustworthy and an asset to our organisation. Carol has displayed great team work, timekeeping and her communication skills are impeccable. Anywhere in which Carol has worked, she has always been requested to return due to her vast knowledge and clinical capabilities. Carol has been employed and working with h1 Healthcare for 9 months and in that time has proven to be an honest and reliable nurse who we are grateful to have working and representing our organisation.

Carol is an essential team player and has demonstrated this throughout the pandemic, helping as and where she possibly can, pushing herself to ensure the safety and care of all patients within her care, is to an adequate standard.

Regional Manager @ H1 Healthcare 17/01/2022'

In Mr 3's oral evidence he stated:

'... Carol is flexible to where she can work, so she does work within different Health Boards in Scotland. She can work within different clinical settings. Primarily it is more the acute side and, like I say in my statement, everywhere Carol has been or has worked there has always been a request for her to return, which, especially for agency nurses, is not always the case ...

...

it was positive feedback that we received for Carol.

...

Carol's communication with myself, it has been impeccable. She is very honest. There is some so much I can say to obviously justify Carol's work ethic and

herself as a person. Carol has been amazing to work with. She has been fantastic, she really has. [sic]

...

Carol is out in the field whereas I am office based, but that is a prime example. She is very honest in that setting.

...

the feedback we received for Carol was around her both work ethic. She has always been an effective team player and always contributed, especially the time of joining the agency; it was in the height of the pandemic so for a nurse to turn up on time and just roll her sleeves up and get to work was tough. So, again, the feedback was received was positive ...' [sic]

The panel considered the public interest in allowing an otherwise competent nurse to remain on the register. In the light of the foregoing, the panel was satisfied that in the particular circumstances of this case, your misconduct was not fundamentally incompatible with remaining on the register. The panel also considered whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that such an order would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel also took into account your personal, family and financial circumstances in the context of considering the length of the sanction on public interest grounds. The panel decided that a longer period of suspension would not be proportionate and would be unduly punitive. The panel determined that a suspension order for a period of three months with a review was appropriate in this case to mark the seriousness of the misconduct.

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:

- Your attendance at any future hearings;
- A current reflective piece regarding what you have learned since these proceedings and the impact of your misconduct on your employer(s), the nursing profession and the NMC as your regulator;
- Evidence of any steps undertaken to strengthen your practice, for example, any learning or training undertaken in relation to ethics and honesty in professional practice; and
- Evidence of testimonials from any work, whether it is paid or unpaid, attesting to your honesty in the workplace

This will be confirmed to you in writing.

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 your own interest until the

suspension 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 Smalley. He invited the panel to impose an interim suspension order on public interest grounds to cover the 28-day appeal period and any period of appeal. He submitted that this interim order would be consistent with the sanction requiring a review at the end of those 3 months.

Mr Oestricher opposed the application. He submitted that this would affect you adversely as the suspension order would be for a period of four months and hence would have a punitive effect on you. He submitted that your case is not a public protection issue and that you are not a danger or a risk to the public.

Mr Oestricher submitted that the panel did not impose an interim order after the impairment stage in February 2022 when the case was adjourned and that you had been safely practising as a registered nurse. Further, 28 days would give your employer sufficient notice of your suspension for a period of three months and afford them the time to make alternative arrangements.

[PRIVATE] He submitted that because of the order, you would not be able to practise as a nurse and would need to seek work as a Healthcare support worker. [PRIVATE]. He submitted that it was reasonable for you to have that 28 day 'grace' period as you are not a risk to the public.

Mr Oestricher submitted that extending the suspension order to 4 months is not necessary to satisfy the public interest ground.

Decision and reasons on interim order

The panel accepted the advice of the Legal Assessor who referred it to the case of *Sheikh, R (on the application of) v General Dental Council [2007] EWHC 2972* that set out the general principle that there is a high bar to be met if an interim order is to be imposed on public interest grounds alone.

The panel had regard to 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 has found that there is no risk to the public in this case and so, in order to impose an interim order, it must be satisfied that such an order is necessary on the grounds of public interest alone. The panel considered the difficult financial impact that such an order would have on you in the 28 days prior to the three-month suspension order coming into effect. The panel also reminded itself that it had not imposed an interim order when the case was adjourned part heard on 4 February 2022.

The panel carefully considered the necessity for an interim order to cover the 28-day appeal period. It concluded that, given the particular circumstances of this case, the panel was not satisfied that the high bar had been met for an interim order to be imposed on the grounds of public interest alone.

The panel therefore did not impose an interim suspension order to cover the 28-day appeal period.

The three-month substantive suspension order will come into effect at the end of the 28-day appeal period.

That concludes this determination.