

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

**Substantive Hearing  
Wednesday 23 February 2022 – 25 February 2022  
AND Tuesday 1 March 2022 – 3 March 2022**

Virtual Hearing

**Name of registrant:** Salihu Kwaji Samas

**NMC PIN:** 99F1361O

**Part(s) of the register:** Nursing – Sub part 1  
RN1: Registered Nurse – Adult (June 1999)

**Area of registered address:** Liverpool

**Type of case:** Misconduct

**Panel members:** David Evans (Chair, Lay member)  
Kim Bezzant (Registrant member)  
Kevin Connolly (Lay member)

**Legal Assessor:** Richard Tyson

**Hearings Coordinator:** Anya Sharma (Day 1)  
Elena Nicolaou (Day 2 onwards)

**Nursing and Midwifery Council:** Represented by Suzanne Fewins, Case  
Presenter

**Mr Samas:** Present and represented by Alexander Adamou,  
Counsel instructed by Unison

**Facts proved by admission:** Charge 1

**Facts proved:** Charge 2

**Facts not proved:** None

**Fitness to practise:** **Impaired**

**Sanction:** **Suspension order (6 months)**  
**Interim order:** **Interim suspension order (18 months)**

## **Details of charge**

*That you a registered nurse between April 2016 and February 2017*

- 1. Provided confidential patient information to Cam Market Research Recruitment Limited. **[PROVED by admission]***
- 2. In acting as set out at charge 1 you acted without integrity in that you knew you were not permitted to provide confidential patient information to Cam Market Research Limited but did so in order to obtain financial gain. **[PROVED]***

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

## **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Fewins, on behalf of the Nursing and Midwifery Council (NMC), under Rule 31 to allow the written statement of Witness 5 into evidence. Witness 5 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, he was unable to attend today due to having to attend jury service. Ms Fewins provided written submissions, which are as follows:

### *'INTRODUCTION*

- 1. The NMC invite the Panel to admit the evidence of (Witness 5) under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 ('the Rules').*
- 2. The NMC submit that the evidence is relevant and fair.*

## GENERAL SUBMISSIONS

3. *Before turning to the crux of this application, the NMC submit they have put the Registrant on notice of witness difficulties and by doing so have gone above and beyond what is required. How the regulator, the NMC, gets its witness(es) to a hearing is a matter for the regulator. If the witness(es) do not attend then the NMC can make a hearsay application. Therefore, the NMC submit that there has been no unfairness caused to the registrant in keeping them informed of the difficulties regarding witnesses.*
4. *Furthermore, the NMC submit there was no unfairness to the Registrant by having the evidence placed within the bundle and put before the Panel as this would not be in line with best practice or the relevant authorities such as *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* at paragraph 58 where it is set out that the Panel should have been provided at the fact-finding stage with all of the documents which the claimant (the NMC) had submitted.*
5. *Paragraph 59 further explains that the decision on admissibility was a judgement for the Panel to make, not the legal assessor or the case presenter. In the absence of the Appellant the only proper way for the Panel to judge the relevance and admissibility of the statements was for the Panel to read it themselves.*
6. *So essentially the Panel have to see what it is they're being asked to adjudicate on. The Panel cannot be expected to judge the relevance and fairness of evidence if they cannot see it for themselves, otherwise the Panel would be relying on a generalised description from Counsel and placing reliance on Counsel's interpretation, which is wholly wrong as Counsel is not the Judge of fact.*

7. *The alternative is for Counsel to give such a detailed description to enable the Panel to understand however, at that point, the documents may as well be handed out otherwise Counsel would simply be reading them out.*
8. *If the Panel refuse the hearsay application, it is submitted that as a professional Panel, you would be able to put it out of your mind as the Panel are not a jury but are adjudicators on what to admit.*
9. *It is therefore submitted that this hearsay application can be dealt with properly and fairly.*

#### **THE PANEL'S ROLE**

10. *It is submitted that the Panel are required to consider the merits of the evidence and decide whether to formally admit the evidence, to accept it into the evidence the Panel take into account when they retire.*
11. *The case of El Karout v NMC (2020) EWHC 3079 adopts the principles of Ogbonna (2010) EWCA Civ 1216 and Thorneycroft, and makes clear the need for a Panel to undertake a careful balancing exercise before admitting hearsay evidence, especially in a case where the evidence is the sole or decisive evidence on an allegation. The key issue in all cases is one of "fairness".*
12. *If the Panel decide to admit the hearsay evidence, then the Panel can determine what weight to attach to that evidence. As per the case of The Professional Standards Authority v (1) The Nursing and Midwifery Council (2) Jozi [2015] EWHC 764 (Admin), hearsay statements will usually carry less weight than oral evidence because it cannot be tested. Hearsay evidence may also be inadmissible where the weight which could be given to it in the circumstances of the case is zero, even where there is other evidence that could 'corroborate' (or support) it.*

*(WITNESS 5) STATEMENT*

13. *The NMC wish to rely on the evidence of (Witness 5) in order to pursue the NMC's statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.*
14. *Firstly, it is submitted that the evidence is relevant as it goes towards the charges. (Witness 5) was asked to provide HR support for the Panel at the Registrant's disciplinary hearing. He was present when the Registrant provided his responses and took a hand written note of the meeting.*
15. *Secondly, the NMC submit it would be fair to admit the evidence.*
16. *At paragraph 56 of Thorneycroft, there are a number of factors for the Panel to take into account when deciding on admitting evidence:*
17. *In my judgment, it is essential in the context of the present case for the Panel to take the following matters into account:*
- a) whether the statements were the sole or decisive evidence in support of the charges;*
  - b) the nature and extent of the challenge to the contents of the statements;*
  - c) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
  - d) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
  - e) whether there was a good reason for the non-attendance of the witnesses;*
  - f) whether the Respondent had taken reasonable steps to secure their attendance; and*
  - g) the fact that the Appellant did not have prior notice that the witness statements were to be read.*

16. *Dealing with each of those factors in turn:*

- a) *This evidence is not the sole and decisive evidence in support of the charge. (Witness 5) was the HR Business Partner at the Trust at the material time who was asked to provide HR support for the Panel at the disciplinary meeting on the 19/3/18. Two other witnesses, (Witness 1 and Witness 4), were also in attendance at the meeting and will give live evidence on this point. (Witness 5) made handwritten notes throughout the hearing and documented the Registrant's responses during the meeting and exhibits those notes as (...)*
- b) *Witness 5's evidence is contested. It is not clear to what extent the Registrant disputes and challenges the content of their statement. The NMC submits that the Registrant's representative can address the Panel further on this point.*
- c) *It has not been articulated that there is a suggestion that Witness 5 has a reason to fabricate their allegations.*
- d) *The charges are serious as not only do the charges include allegations of acting without integrity, but also there are serious concerns which could result in harm to patients if not put right.*
- e) *Witness 5 is unable to attend the hearing as he has been summoned for Jury Service. Witness 5 is not a witness who has failed to engage or refused to attend. He is legally obliged to attend Court for Jury Service. Witness 5 has confirmed that he is participating in a lengthy criminal trial and is not able to attend on any of the dates that are currently allocated for this matter.*
- f) *Prior to this, Witness 5 was not a witness who the NMC had concerns about engaging in the process. The witness was summoned for Jury Service for which he is legally obliged to attend.*

- g) *As stated at the start of the submissions, the NMC submit they had put the Registrant on notice of witness difficulties and by doing so had gone above and before what it required. It is submitted that there has been no unfairness caused to the Registrant by keeping him informed regarding the difficulties with this witness.*

## CONCLUSION

*17. In light of the above submissions the NMC submit that the evidence is relevant and fair.*

*18. If the Panel allow the hearsay evidence, then no further steps are required to be taken.'*

Mr Adamou, on your behalf, provided written submissions which are as follows:

### *Introduction*

- 1. This is a Skeleton Argument prepared on behalf of Salihu Kwaji Samas (the Registrant) resisting the entry of the witness statement of (Witness 5) as evidence in the indexed proceedings.*
- 2. The matter commenced its Final Hearing on 23 February 2022 and is listed to continue until the 3 March 2022.*
- 3. The Registrant would invite the panel to refuse the admission of the statement of (Witness 5) as it is irrelevant and unfair.*

### *Allegations faced by the Registrant.*

- 4. The Registrant faces two allegations which are:*

- a. *Provided confidential patient information to Cam Market Research Recruitment Limited.*
  - b. *In acting as set out at charge 1 you acted without integrity in that you knew you were not permitted to provide confidential patient information to Cam Market Research Limited but did so in order to obtain financial gain.*
5. *The first of these charges has been accepted by the Registrant and thus the panel is only concerned with the charge of whether the Registrant acted with integrity.*
  6. *As a result the Registrant would contend that when considering the admission of any hearsay evidence it must therefore consider from the frame of reference of there being one specific question before the panel.*

#### Background

7. *The Registrant is a registered Urology Nurse who previously worked at the Royal Liverpool and Broadgreen University Trust ("the Trust).*
8. *The Registrants name was first entered onto the NMC register in 1999. He was employed by the Trust from 1999 up until his dismissal on the 22nd March 2018.*
9. *The allegations relate to the Registrant providing patient details for financial remuneration during certain elements of 2016 and 2017.*
10. *The Registrant has accepted that he did provide patient details but has set out that he had consent for doing so and was acting in the patient's best interest.*

#### The Rules on Hearsay

11. *The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI 2004/1761) sets out in rule 31 (1) that:*

31. (1) *Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place)*
12. *It is accepted that, in principle Hearsay Evidence is admissible in Regulatory and Civil Proceedings as per Section 1 of the Civil Evidence Act 1995 (“the Act”).*
13. *Section 4 of the act there are criteria for the court (in this case the panel) to consider when assigning weight to hearsay evidence during a hearing. However, it should be noted that for the court or tribunal to arrive at the exercise of assigning weight to hearsay evidence it must be first admitted as evidence in proceedings.*
14. *It is submitted irrespective of para 13 above the criteria set out in section 4 can also be used by the panel as relevant factors when assessing the fairness of the admission of any proposed hearsay evidence however they should not be the only factors as set out below.*

#### *The Test to be Applied*

15. *When assessing whether hearsay evidence is admissible the tribunal should apply the twin tests of relevance and fairness.*
16. *When assessing relevance, the Registrant submits that this is to be assessed as relevant to the facts and allegations in issue between the parties and not a matter of peripheral relevance in the circumstances.*

17. *The more key or crucial evidence is to a particular allegation the more likely it is to be relevant.*

18. *Having assessed the evidence of (Witness 5) it is denied that this is evidence that would be relevant as it is not the sole or decisive evidence in relation to the allegations brought against this Registrant amongst other factors set out below.*

19. *Further submissions in relation to relevance and fairness will be set out below, however when assessing fairness, the Registrant submits this includes balancing of the interests of the Regulator and the Registrant.*

### The Case Law

20. *The Registrant submits that the starting point for the panel would be the Appeal Judgement in R v Horncastle [2009] EWCA Crim 964. This is a judgement that is said to complement the Supreme Court's own in the same matter.*

21. *In this case Lord Justice Thomas stated at paragraph 7:*

*The law in England and Wales has in consequence always insisted that it is ordinarily essential that evidence of the truth of a matter be given in person by a witness who speaks from his own observation or knowledge. It uses the legal expression 'hearsay' to describe evidence which is not so given, but rather is given second hand, whether related by a person to whom the absent witness has spoken, contained in a written statement of the absent witness, given in the form of a document or record created by him, or otherwise."*

22. *This approach was approved by the leading authority of Ogbonna v Nursing and Midwifery Council [2010] EWCA Civ 1216.*

23. *This case emphasised the fact sensitive approach to each case and Rimer LJ (during the appeal) rejected the notion promoted by the Nursing and Midwifery*

*Council (NMC) that the rule admitting hearsay evidence 'subject only to the requirements of relevance and fairness' establishes a general principle to admit hearsay evidence as a matter of course and then address the issue of fairness by determining the weight to attach to that evidence.*

*24. In particular at paragraph 23 and 24 of the judgement it was noted:*

*That submission appears to me to overlook the point that the criterion of fairness referred to in 31(1) is relevant to whether a statement should be admitted at all: the rule expressly requires decisions as to the admission or exclusion of a hearsay statement to be governed by considerations, inter alia, of fairness. In that context, the NMC should perhaps be reminded that it was seeking to adduce Ms Pilgrim statement as the sole evidence supporting the material parts of Charge 1 when it knew that that evidence was roundly disputed and could not be tested by cross-examination. It was, moreover, seeking so to adduce it in support of a case that it was promoting, whose outcome could be (as in the event it was) the wrecking of Mrs Ogbonna's career as a midwife, a career which had lasted over 20 years. I should have thought it was obvious that, in the circumstances, fairness to Mrs Ogbonna demanded that in principle the statement ought only to be admitted if she had the opportunity of cross-examining Ms Pilgrim upon it.*

*If the pursuit of Charge 1 against Mrs Ogbonna was regarded as important, it should have been obvious to the NMC that it could and should have sought to make arrangements to enable such cross-examination to take place -- either by flying Ms Pilgrim to the UK at its expense, or else by setting up a video link. Mrs Ogbonna made the point to the CCC to the effect that the NMC had given no thought to anything like that, a point that the CCC appears to have ignored, proceeding instead on the groundless, and mistaken, assumption that Ms Pilgrim had said that she was unable to come to the United Kingdom. If, of course, despite reasonable efforts, the NMC could not have arranged for Ms Pilgrim to be available for cross-examination, then the case for admitting her*

*hearsay statement might well have been strong. But the NMC made no such efforts at all.*

25. *The matter of the has been supplemented with the matter of R (on the application of Bonhoeffer) v General Medical Council [2011] EWHC 1585 (Admin) which highlighted that although there was no absolute right to cross examination there must be compelling reasons to deprive Registrant of this opportunity.*
26. *That this was all the more important of the case was serious and would have serious consequences if proved. This case also set out that serious damage to reputation or standing should be considered in this assessment.*
27. *In particular in the matter of Bonhoeffer the court found that the witness would not be at any greater risk by giving live evidence than from reading their statement (para 55).*
28. *Issues of this nature have also been dealt with in The Grand Chamber decision in Al-Khawaja and Tahery v UK [2011] ECHR 2127 (Grand Chamber). It concluded that an inability to cross-examine did not automatically result in unfairness or mean that Article 6 was breached, however there must be strong procedural safeguards to alleviate the difficulties caused to the defence.*
29. *Finally the court should consider the recent case of El Karout and NMC [2019] EWHC 28 (Admin) which held that are two distinct stages to assessing fairness when considering hearsay in regulatory proceedings:*
  - a. *Stage 1 – Admissibility*
  - b. *Stage 2- Weight*

30. *Mr Justice Spencer stated it was 'extremely regrettable' that 'no consideration' had been given to admissibility at the hearing by the NMC, defence counsel or the Legal Assessor but rather, submissions had focused solely on weight.*

31. *This matter cited NMC v Ogbonna [2010] EWCA Civ 1216, he emphasised the 'critical distinction' between the two concepts and upheld the appeal.*

### Relevance

32. *It is submitted that the statement of (Witness 5) is of little relevance to the panel in determining the question before it.*

33. *The Panel must decide, on the balance of probabilities, whether the Registrant acted with integrity in providing confidential information to Cam Market Research Limited.*

34. *(Witness 5) cannot speak to the Registrant's actions at the time he provided confidential information nor can he properly speak to the intention of the Registrant.*

35. *This is due to him becoming involved later in the investigation but also due to the simple nature of being unable to make a full or proper assessment of the Registrant only meeting him the once in what can only be described as stressful circumstances.*

36. *As a corollary to this point it would be maintained that the demeanour or behaviour of the Registrant at a Disciplinary Hearing is not relevant to whether the Registrant acted with integrity in divulging confidential information.*

37. *To apply such approach and consider the description of the attitude and demeanour of the Registrant in his hearing would be to retroactively apply a*

*subjective impression to previous events which, it is submitted, would be inappropriate.*

- 38. The panel will need to form their own conclusion of how the Registrant acted at the relevant time and this should be divested and disassociated from the perceptions of others into the Registrant's actions.*
- 39. Furthermore in relation to the Disciplinary hearing it is submitted that this matter is more than adequately covered, for the purposes of this hearing, by the evidence of (Witness 1) and thus it could be said that the evidence of (Witness 5) is duplicative at best.*
- 40. Finally the outcome or considerations of any such Disciplinary Hearing is in no way relevant to the key question that this panel need concern themselves with.*
- 41. As such the panel are invited to dismiss the application made by the NMC on this ground.*
- 42. Therefore it is submitted that the evidence of (Witness 5) does not take matter any further and should not be admitted on the ground that it is irrelevant.*

### Fairness

- 43. The determination of fairness is fact-sensitive and will depend on the following factors:*
- a. The nature of the evidence,*
  - b. the reason for the non-attendance of a witness,*
  - c. what steps were taken to secure the attendance of that witness and*
  - d. the problems admission may cause to the Registrant.*

44. *The allegations can be generally described as a failure to act with integrity. Allegations of this nature are serious as they allege an undermining of the principle relationship between service users and Registrants.*
45. *Such allegations are even more serious in this particular set of circumstances as they would represent a blight on what is otherwise an unblemished lengthy career of a specialised and highly regarded individual.*
46. *The fundamental problem this causes the Registrant is that he is unable to challenge the core case placed against him in addition to its lack of relevance to matter of concern to the panel.*
47. *Therefore it is submitted that the assessments made in the evidence of (Witness 5) are prejudicial and even more so when they are not capable of challenge.*

#### *The Evidence of (Witness 5)*

48. *The evidence of (Witness 5) represents personal and subjective comments in relation to the Registrants attitude and demeanour during disciplinary proceedings.*
49. *It is submitted that the consequence of allowing the evidence of (Witness 5) to be admitted as hearsay evidence would be to allow the Registrant to be made subject to aspersions on his character and behaviours based entirely or primarily on hearsay. This profoundly unfair and a strong starting point in favour of rejecting the admission of this evidence.*
50. *The Registrant would be deprived of the opportunity of effectively putting forward his case as well as challenging the factual and subjective assertions and credibility of the witness.*

51. *As a result of all of the above the Registrant is unable to ask any questions of (Witness 5) challenge her recollection of events or her credibility. It is submitted that simply being able to determine the weight of this evidence would be insufficient to overcome the prejudice caused by being unable to cross examine this witness.*

52. *At the time of the application the evidence remains untested and unchallengeable.*

### Reasons for non-attendance

53. *(Witness 5) has indicated that he is unavailable to attend to participating in jury service.*

54. *Whilst it is not contended that this is not a proper reason for non-attendance the Registrant would question whether it reached the level of compelling reason as set out in the case law above.*

55. *It is unclear what steps the NMC have taken to secure the attendance of (Witness 5), including applying for a witness summons or requesting him be released from his jury service for a morning/afternoon.*

56. *Given the evidence provided it is clear that (Witness 5) would not be required for any extended period of time and thus it is submitted this should have at least been considered.*

57. *The Registrant that consideration of this should also be fatal to the hearsay application.*

### Conclusion

*58. The Registrant therefore invites the panel not to allow the admission of the evidence of (Witness 5) as hearsay evidence.*

*59. The Registrant submits that it is irrelevant evidence and would be unfair to admit hearsay evidence in this case for the reasons listed above.*

*60. In the alternative, if the evidence were admitted, such weight should be afforded to that evidence as the panel sees fit in light of the submissions made and the Panel's assessment.'*

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

The panel gave the application in regard to Witness 5 serious consideration. The panel noted that Witness 5's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement ... is true to the best of my information, knowledge and belief*' and signed by him.

The panel considered that its role is to form its own view on the matters of integrity in relation to this case. After reviewing Witness 5's statement carefully, it considered that a large part of it was irrelevant and formed a number of opinion-based views as opposed to facts.

However, the panel considered that there are some elements of the statement that are helpful and relevant to the case and the outstanding charge. This includes factual information that has not been heard or raised previously in other witnesses' evidence, that can be explored further on cross examination of your evidence at a later stage. If there is

no admission of Witness 5's evidence, then examination of these issues would not be possible.

The panel decided that this was not sole or decisive evidence, and the nature of the challenge as expressed in Mr Adamou's submissions was not of the greatest prejudice. Mr Adamou conceded that there may be passages within Witness 5's statement that were relevant to the issue of integrity. The panel decided that there was no evidence before it that the information within this statement had been fabricated in any way. It acknowledged that this is a serious charge that could have significant implications on your career. It decided that there were good reasons for Witness 5's non-attendance at this hearing, and that there is evidence of communication between the NMC and Witness 5 to secure his attendance. It also decided that you were given prior notice of the difficulties in relation to obtaining Witness 5's attendance at this hearing.

In relation to balancing fairness towards the NMC and you, the panel noted the likely level of weight it could give to the statement when considering its factual determination. It also considered that there are some passages within the witness statement that are relevant to the matters in this case, which has also been acknowledged by Mr Adamou. The panel had been advised by Ms Fewins that if the evidence of Witness 5 was not admissible then the NMC would call Witness 4 to give live evidence. The panel reviewed Witness 4's statement and considered that the evidence provided by Witness 4 which contains even more opinion-based views and irrelevant information than Witness 5.

The panel accepted that, of course, there would be some prejudice if Mr Adamou was unable to cross-examine Witness 5. However, and bearing in mind (a) the likely weight that would be given to this evidence at a later stage, (b) the likely nature and extent of any challenge to Witness 5's evidence and (c) this is not the sole evidence on the issue of integrity, the panel determined that any prejudice to you was outweighed by the other factors that they have considered in favour of admitting this evidence.

There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances and on careful consideration of the evidence before it, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Witness 5, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

### **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Mr Adamou, who informed the panel that you made an admission to charge 1.

The panel therefore finds charge 1 proved, by way of your admission.

In reaching its decisions on the remaining disputed fact, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Fewins and by Mr Adamou.

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 Witnesses 1, 2 and 3, called on behalf of the NMC:

- Witness 1: Service Manager, Royal Liverpool and Broadgreen University Hospital Trust
- Witness 2: Investigating Officer, Merseyside Internal Audit Agency (MIAA); Royal

Liverpool and Broadgreen University  
Hospital Trust

- Witness 3: Directorate Manager and Line  
Manager, Royal Liverpool and  
Broadgreen University Hospital Trust

As a result of the decision to allow the hearsay application of Witness 5's evidence, Witness 4 was not called to give live evidence.

- Witness 4: Former General Manager, Royal  
Liverpool and Broadgreen University  
Hospital Trust
- Witness 5: HR Business Partner, Royal  
Liverpool and Broadgreen University  
Hospital Trust

The panel also heard evidence from you under affirmation.

## **Background**

The charges arose whilst you were employed as a registered nurse by Royal Liverpool and Broadgreen University Hospitals NHS Trust (the Trust). You had worked there since you qualified in 1999. At the time of the incident, you were employed as a Specialist Urology Nurse until your dismissal for gross misconduct on 22 March 2018.

The concerns relate to you providing a private pharmaceutical research company, Cam Market Research Limited (the Company), with confidential patient information for your own financial gain; allegedly obtaining remuneration for this in the form of money and a gift voucher. The concerns also relate to your alleged lack of integrity by undertaking these actions.

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 Mr Adamou.

The panel then considered the remaining disputed charge and made the following findings.

## **Charge 2**

That you a registered nurse between April 2016 and February 2017

2. In acting as set out at charge 1 you acted without integrity in that you knew you were not permitted to provide confidential patient information to Cam Market Research Limited but did so in order to obtain financial gain.

### **This charge is found proved.**

In reaching this decision, the panel took into account all of the oral and documentary evidence before it. In particular it considered the email exchanges between you and the Company, the relevant provisions of the Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code), and three of the relevant Trust policies namely: Research, Development and Innovation Department Standard Operating Procedure for Obtaining Informed Consent for Research; The Personal Information and Confidentiality Policy; and The Standards of Personal and Business Conduct Policy.

The panel assessed the witness evidence that it had heard and concluded that the NMC witnesses had given fair and credible evidence. In relation to the hearsay evidence of Witness 5 the panel gave little weight to the substance of that evidence. When assessing your evidence, the panel considered that it was inconsistent and conflicting at times and lacked credibility on a number of issues. In particular, the panel noted that in your recent witness statement you had stated that you had received £100 from the Company and

donated this to a hospice, whereas in your oral evidence you stated in the end that you had kept this money for your own use. Again, in your witness statement you stated that you had no direct involvement with the provision of information from erectile dysfunction patients. This statement is contradicted by the evidence in the email chains between the Company and yourself. In fairness to you however, the panel did note in the course of you giving evidence that you appeared to show a growing awareness and insight into the fact that you may well have shown lack of integrity in your dealings with the Company.

The panel considered your state of mind at the time of the incident. The panel decided that you knew it was not permitted to provide confidential patient information to the Company, and that there is clear evidence before it indicating that you were aware this action was not permitted by the Trust's policies or the Code. You told the panel in your oral evidence that you were aware of the relevant Trust policies, the Code and what they contained. The panel considered that, as an experienced registered nurse, you would have had a good understanding of your responsibilities regarding patient confidentiality, as outlined in the Code. The panel decided that you had deliberately chosen not to contact management for advice on the matter, when you were approached by the Company, as you were aware that it was wrong to provide confidential patient information in these circumstances.

The panel considered the subject of obtaining consent from your patients to provide their personal details to the Company. You had not obtained written consent from these patients although in your oral evidence you stated that you had obtained verbal consent after discussing the process with them. You could give no plausible explanation as to why you did not obtain written consent despite this being a clear requirement of the Trust's Standard Operating Procedure for Obtaining Informed Consent for Research. The panel accepted that there could be occasions when it was appropriate to obtain verbal and not written consent to share confidential patient data with third parties. However, these occasions would normally be urgent clinical situations where obtaining written consent could jeopardise patient safety or situations where information needed to be shared in order for other professionals to provide care appropriately. The panel did not consider providing patient data for market research purposes fell into either of these categories. There were no obstacles to you obtaining written consent and recording that consent in

the patients' notes. During your verbal evidence, you stated that you liked to give the patients plenty of time to consider your request to share their data so it was evident to the panel that there was no time pressure. The panel decided that written consent, as required by Trust policies, could have been sought and there was nothing to prevent you from doing so. The panel found there is also no convincing evidence that a formal discussion had taken place with these patients in relation to the process, and nothing to indicate the nature of information you gave to them, including whether you would be gaining financially from the provision of information. The panel concluded that your motive for not obtaining written consent and recording it in the patients' notes was in order to obscure your actions from scrutiny within the Trust.

The panel next considered the element of financial gain. It noted that you had described wanting to improve patients' lives in relation to the metastatic prostate cancer drug and the erectile dysfunction treatment, and that you had wanted to make a difference. However, it also noted that you had clearly supplied your bank details in an email to the Company, had received monies from it and had attempted to redeem an Amazon gift voucher from them. You could have declined these financial benefits or, alternatively, given them to the Trust. It noted your admission that you had kept the money for your own personal use. The panel decided that you knew you were going to be paid, based on the clear audit trail of the emails between yourself and the Company, and that you had not declared this to management as you knew it was wrong. It considered your oral evidence in which you stated that you had declared smaller gifts to management previously, so there was no reason as to why you did not do the same this time. The panel was of the view that, while you had some laudable motives for providing confidential patient information to the Company, a further motive, or intention, was to obtain a financial gain.

The panel considered your oral evidence in which you stated "*I thought I could get away with it, why not?*", in response to a question from a panel member as to why you had not declared the payment that you had received.

The panel decided that, based on all of the evidence before it, including your admissions in evidence that your actions were "*a mistake*" and "*an error of judgment*", it is clear that

you knew your actions were wrong. You were asked during your oral evidence why you did not declare the money you received to the Trust, and was it because you knew it was wrong, you responded “*possibly yes*” and when further questioned whether this was in contravention of Trust policies and the Code, you responded “yes”. The panel determined that you had gained financially from the Company, and you did not undertake the appropriate procedures or follow the Trust policies when you had sufficient time and opportunity to do so. You did not discuss what you were doing with management, and you did not declare the payments you received. You gave a justification for your actions as wanting to improve your patients’ lives, and although you may have believed you were doing the right thing in this respect, the panel decided that you could and should have handled this situation differently by adhering to the policies and the Code.

The panel noted that you had referred the Company on to another member of staff at another Trust, who raised questions of concern to that Trust about the appropriateness of what was being requested by the Company. It considered that although you may have seen your motives as being the right thing to do at the time and believed you would be benefiting your patients and their quality of life, you did not consider that the financial gain from it was wrong, and therefore your actions had fallen far short of the standards expected of a registered nurse. Further, it considered that you had stated you did not feel supported by management, and this may have prevented you from speaking to them about the situation at the time. However, when questioned about why you didn’t tell anybody about your relationship with the Company, you stated that you knew this placed you in breach of Trust policies and the Code. The panel determined that having access to confidential patient data requires you to have the trust of both patients and your employer. Breaching the rules regarding the custody of confidential patient information is also a breach of the trust that exists between yourself, your patients and your employer. In your dealings with the Company the panel considered that you had lost your moral compass.

Based on all of the evidence before it, the panel decided that it was more likely than not on the balance of probabilities that, in acting as set out at charge 1 you acted without integrity in that you knew you were not permitted to provide confidential patient information to the Company but did so in order to obtain financial gain.

The panel therefore finds charge 2 proved.

### **Fitness to practise**

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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.*'

Ms Fewins invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of the Code in making its decision. Ms

Fewins identified the specific, relevant standards where your actions amounted to misconduct. She provided written submissions which are as follows:

*'Misconduct*

1. *Misconduct is a matter for the Panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says:*

*"misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."*

2. *In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:*

*'it connotes a serious breach which indicates that the doctor's fitness to practise is impaired.'*

3. *Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated 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."*

4. *The facts admitted or proven relate to two matters:*

- a) *That the registrant provided information to cam market research limited; and*

- b) *Acted without integrity in that he knew that he was not permitted to provide said confidential information to Cam Market Research Limited but did so in order to obtain financial gain.*
5. *The NMC Code sets the professional standards of practise and behaviour for nurses, midwives and nursing associates and the standards that patients and public tell us they expect from nurses, midwives and nursing associates. The values and principles within are not negotiable.*
6. *The NMC submits that Registrant's actions fell far short of what would be proper in the circumstances and of the standards expected of a registered nurse. The Panel will recall the evidence in respect of what is expected of a nurse in line with the NMC code and the trust policies. The NMC submits that such actions would undermine the faith and trust that the public places in the nursing profession if they were to become aware that the professional standards of practise were not being met.*
7. *The NMC draws the Panels attention to the Code:*

*Part 4 of the NMC Code states:*

***Act in the best interests of people at all times***

*To achieve this, you must:*

*4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

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

*4.3 keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process*

*4.4 tell colleagues, your manager and the person receiving care if you have a conscientious objection to a particular procedure and arrange for a suitably qualified colleague to take over responsibility for that person's care*

Part 5 of the NMC Code states:

***Respect people's right to privacy and confidentiality***

*"As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.*

*To achieve this, you must:*

*5.1 respect a person's right to privacy in all aspects of their care*

*5.2 make sure that people are informed about how and why information is used and shared by those who will be providing care*

*5.3 respect that a person's right to privacy and confidentiality continues after they have died*

*5.4 share necessary information with other health and care professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality*

*5.5 share with people, their families and their carers, as far as the law allows, the information they want or need to know about their health, care and ongoing treatment sensitively and in a way they can understand."*

Part 20 of the NMC Code states:

**Promote Professionalism and Trust 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

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

20.4 keep to the laws of the country in which you are practising

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers

20.7 make sure you do not express your personal beliefs (including political, religious or moral beliefs) to people in an inappropriate way

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

20.9 maintain the level of health you need to carry out your professional role

20.10 use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times

Part 21 of the NMC Code states:

***Uphold your position as a registered nurse, midwife or nursing associate***

*“To achieve this, you must:*

*21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment*

*21.2 never ask for or accept loans from anyone in your care or anyone close to them*

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

*21.4 make sure that any advertisements, publications or published material you produce or have produced for your professional services are accurate, responsible, ethical, do not mislead or exploit vulnerabilities and accurately reflect your relevant skills, experience and qualifications*

*21.5 never use your status as a registered professional to promote causes that are not related to health*

*21.6 cooperate with the media only when it is appropriate to do so, and then always protecting the confidentiality and dignity of people receiving treatment or care.”*

Mr Adamou began his submissions by referring to your bundles containing a training record, letters of appreciation from patients, and also your recent reflective piece. He submitted that the purpose of these proceedings is not to punish, but to manage and assess the risk present.

Mr Adamou referred to case law and highlighted that simple misjudgement, negligence and naivety would not immediately amount to misconduct, and that there must be an element of seriousness in relation to any conduct found when considering the circumstances of the case. He referred to a number of findings made by the panel, including that an element of your motivation was that of financial gain, and your failure to follow the Code and Trust policies. He submitted that these breaches did not automatically lead to a finding of misconduct, and the panel should carefully consider the context of the case as to whether the seriousness of the circumstances warranted such a finding.

Mr Adamou further submitted that, when considering seriousness, the panel should also take account of the fact that it did not expressly find that no consent had been given by the patients and also that there was no element of dishonesty.

Mr Adamou submitted that it is a decision for the panel to consider whether your actions amounted to misconduct.

### **Submissions on impairment**

Ms Fewins moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin)*.

Ms Fewins provided written submissions which are as follows:

#### *'Impairment*

8. *There is no definition of "impairment" provided by the NMC's legislative framework. The NMC does, however, define "fitness to practise" as the*

*suitability to remain on the register without restriction. The panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC 2 (Grant) [2011] EWHC 927 (Admin):*

*“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.”*

- 9. This case also makes it clear that the public interest must be considered paramount and states:*

*“It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession.”*

- 10. In applying these principles to the case at hand, the NMC submits that the Registrant’s fitness to practise is impaired in that he has breached the*

- fundamental principles of the profession. The Registrant acted without integrity in knowingly failing to undertake the appropriate procedures or follow trust policy. The failings were basic and fundamental to safe and effective practise.*
11. *The Panel must consider the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence.*
  12. *With regard to future risk, regard should be had to the comments of Silber J in Cohen v General Medical Council [2008] EWHC 581 (Admin) namely, whether the concerns are easily remediable, whether they have in fact been remedied and whether they are highly unlikely to be repeated.*
  13. *In determining current impairment, the Panel should consider whether the Registrant has demonstrated safe practice since these allegations, whether there has been any reflection or insight, and whether the Registrant has undertaken any further training to remediate his errors.*
  14. *The Panel found that in the course of the Registrant's evidence he appeared to show a growing awareness and insight into the fact that he may well have shown lack of integrity in his dealings with Cam Market Research Limited.*
  15. *The NMC submits that this demonstrates that the Registrant, in developing this awareness only very recently, has not adequately reflected on his actions and there has been no opportunity for these issues to be remediated and so the Registrant's fitness to practise is impaired'.*

In his submissions on impairment, Mr Adamou made reference to *Grant* and submitted that limbs (b) and (c) of this test are the only ones likely to be engaged. He submitted that there is no suggestion that your actions caused or even presented a risk of harm to patients. He also submitted that there is no dishonesty element in this case.

Mr Adamou made reference to *General Medical Council v Meadow [2007] QB 462 (Admin)*. He submitted that there has been a significant period of time between the incidents that occurred in 2016 and at the start of 2017, and that we are now in 2022. He submitted that you have never been subject to an interim order and you are currently employed as a registered nurse by Kind Care Company. This suggested a limited risk of repetition in the future.

Mr Adamou also referred to your training record, and submitted that it seeks to remedy the elements of deficiency that the panel had found, as it includes completed courses on data privacy, dignity and confidentiality.

In relation to insight and attitude, Mr Adamou referred to the case of *Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin)*, which sets out that a panel can take into account a registrant's positive attitude when considering impairment. He submitted that you are an earnest and conscientious registrant who is seeking to better yourself and learn from your failings. He submitted that it is clear from your reflective piece that you accept that there were failures, you had learned from your experiences and you agree that you could have 'done better'. He submitted that in your oral evidence, you agreed that alternative options could and should have been explored in relation to the incident.

Mr Adamou submitted that you are apologetic, and willing to learn and develop. He submitted that insight is not about remediating anything that could or would have gone wrong, but about a registrant assessing the failures that have occurred and why they took place. He accepted that the panel's finding that, at the time, you had lost your moral compass. He submitted that this lapse from six years prior does not suggest you are the same individual or that you do not have current insight.

Mr Adamou submitted that you have an outstanding history of service, indicating that you are not currently impaired and that, looking forward, you can practise as a nurse with impunity.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Nandi v General Medical Council [2004] EWHC 2317 (Admin)*, *GMC v Meadow*, *Nicholas-Pillai v GMC* and *Grant*.

## **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:

**‘4 Act in the best interests of people at all times**

*To achieve this, you must:*

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

**5 Respect people’s right to privacy and confidentiality**

*To achieve this, you must:*

**5.1** *respect a person’s right to privacy in all aspects of their care*

**5.2** *make sure that people are informed about how and why information is used and shared by those who will be providing care*

**Promote professionalism and trust**

*‘You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the*

*Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.'*

**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*
- 20.5** *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*
- 20.8** *act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to*

**21 Uphold your position as a registered nurse, midwife or nursing associate**

*To achieve this, you must:*

- 21.1** *refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment*
- 21.3** *act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions fell significantly short of

the standards expected of a registered nurse, and that they did amount to misconduct. It considered that your actions would also be seen as deplorable by fellow practitioners.

The panel noted that you had breached the trust of your patients and colleagues, that you accepted the payments for your own personal use, that you breached the Trust's policies and elements of the Code, and that you acted with a lack of integrity.

In relation to seriousness, the panel considered the actions mentioned above, together with your failure to consult with management were an attempt to obscure your actions from scrutiny. The panel determined that you had made a conscious decision to not abide by the Trust's policies and the Code, all of which you had told the panel in your evidence that you were aware of and accepted you had breached.

In relation to the matter of integrity, this is a fundamental requirement of a registered nurse and the panel considered that, although there is no element of dishonesty in this case, a registered nurse that acts without integrity is a very serious concern. It was of the view that the public place a significant amount of trust into nurses and it is an expectation that integrity is maintained.

The panel found 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 whether, as a result of your 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 act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

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

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel finds that your misconduct has breached the fundamental tenets of the nursing profession and has also brought its reputation into disrepute. Further, the panel considered that there is a risk that you may act in a similar way in the future, due to your poorly developed insight.

The panel further considered that, while you did not put patients at a risk of unwarranted harm, you did put them in a difficult situation in relation to disclosing their private information to a third party.

The panel noted that there is clear evidence before it that you are an experienced, capable and caring nurse, by reference to the accounts of your colleagues and by the letters of appreciation from patients at your current place of employment, all of which speak highly of you and your practice. However, it considered that your insight is currently at a very early stage. The reflective piece you provided was rather superficial, and it did not address the impact your actions could have had on your patients, colleagues and the wider public. It does not demonstrate that you have clearly understood the concerns at hand and it does not address the root cause of the incidents. The panel noted that in your reflection you did briefly address the profession and how the financial gain aspect of the concerns *“may therefore have potentially caused an impact on my fellow registrants and the profession as a whole”*. The panel considered that you have had a long period of time to reflect on your actions and that it would have expected a greater level of insight to have been demonstrated by this stage. However, it considered that during your oral evidence you had begun to show some emerging insight.

The panel considered that you are remorseful and apologetic about your actions, and that you have completed some relevant training. On the issue of training, the panel considered that the issue here was not that you had not received training, or were unaware of the Trust policies and the Code, but that you had deliberately chosen not to abide by them. Therefore, the value of further training in them was somewhat limited.

The panel noted that it does not have any references from your current employer as to how you are working in your current role.

The panel considered that there is a risk of repetition in the future as the concerns have not yet been suitably addressed, and there is no evidence of sufficient insight demonstrated by you at this time. It highlighted the importance of further developing a deeper level of insight into your actions and the impact they could have had on your patients, colleagues, the profession and the public. Of concern, the panel noted that there were two instances where you had attempted to put blame on somebody else, including a staff member from another Trust and also on Ms Fewins, the NMC Case Presenter, where during the course of your evidence, you stated (wrongly) that you were '*tricked*' by her. The panel also noted that you maintained your position throughout that you had acted with integrity and that in your oral evidence you had made assertions that were at times contradictory and at times untrue.

The panel concluded that, although there is no evidence that direct harm was caused to patients, there are elements of public protection issues in relation to sharing patients' confidential information, and the risks associated with the misuse of this information. It considered the issues that had arisen surrounding obtaining patients' consent, and the breaches of the Code and of the Trust's policies. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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, as a well-informed member of the public would be very concerned to learn of your actions and if you were permitted to practise unrestricted. 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. In fact, it considered that this case focuses mainly 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 suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

## **Submissions on sanction**

Ms Fewins informed the panel that in the Notice of Hearing, dated 20 January 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.

Ms Fewins submitted that a striking-off order would be sought on both public protection and public interest grounds. She submitted that the concerns that have been raised are serious and are more difficult to put right in this case. She invited the panel to consider the underlying seriousness of the departure from the standards that are expected of you as a registered nurse, and of non-adherence to the Code and Trust's policies.

Ms Fewins submitted that the panel have found that your actions amounted to misconduct and that your fitness to practise is currently impaired. She highlighted that your actions fell seriously short of the conduct and standards expected of a registered nurse and that they

breached fundamental principles of the nursing profession. She submitted that the panel found there is a risk that you may act in a similar way in the future, and that there remains a risk to the public.

Ms Fewins submitted that your insight is at a very early stage and your reflective piece did not address the impact your actions could have had on patients, colleagues and the wider public. She submitted that a long period of time has passed since the incident occurred, and therefore you have had a significant amount of time to demonstrate a deeper level of insight, and yet this only began to become apparent during the course of your oral evidence.

Ms Fewins raised the question of whether you will ever be able to develop the deeper insight required if this has not happened yet. She submitted that the panel should consider the responses that you gave during your evidence. Ms Fewins highlighted that the concerns raised have not yet been suitably addressed and there is no evidence of sufficient insight demonstrated by you at this time and, until you are able to develop this insight, there remains a risk to the public in that your actions could be repeated.

Ms Fewins addressed the wider public interest and submitted that a member of the public would be concerned to learn of your actions and if you were permitted to practise unrestricted. She submitted that concerns have been raised about your professionalism and public interest could not be maintained if you were not removed from the register, based on the seriousness of the case. She submitted that a striking-off order would be the most appropriate sanction in this case.

Mr Adamou submitted that sanction is not about a registrant, but it is about the minimum requirement to safely protect the public, minimise the risks identified and satisfy the public interest. He submitted that you should not be punished for not having shown earlier insight, despite the panel's finding of expecting a greater level of insight by this stage. He referred to case law, indicating that a registrant who defends their case robustly does not equate to a lack of insight. He invited the panel to consider the point on the passage of time between the incident with an element of caution. He submitted that although insight

has only just begun, the panel should consider whether that insight could grow, which could mean you would be able to practice unrestricted in the future. He submitted that the importance lies in how your insight could possibly become in its final form.

Mr Adamou invited the panel to carefully balance the potential consequences of its decision with the need to protect the public and maintaining public confidence in the profession. He referred to the principles of proportionality in this case. He submitted that there are ways and means that this panel could protect the public that would allow no danger to patients, and no damage to the reputation of the profession.

Mr Adamou referred to aggravating features of the case. He submitted that it is clear, as the panel has found, that it considers there to be an element of a breach of trust, an element of concealment although no dishonesty and an element of financial gain. He submitted that these features are cancelled out by the following mitigating features: apart from this incident, there has been a following of good practice; you have shown insight into your actions, albeit that this is at an early stage; and although there was an element of financial gain it was not a primary motive of your actions.

Mr Adamou submitted that you are a laudable, experienced nurse, that your skills are highly valued, and you provide a high level of care for your patients. He submitted that Witness 3 in her evidence stated that you go 'above and beyond' for your patients.

Mr Adamou addressed the public interest and submitted that the panel would need to carefully consider what impact a decision will have not just on you, but on the profession and the wider public. He submitted that the public interest of maintaining an otherwise valued member of the profession on the register would outweigh the aggravating features that have already been outlined by the NMC. He submitted that there is a real need to identify what the next steps are and how long these may take.

Mr Adamou took the panel through the sanctions available to it. He submitted that no further action and a caution order would be inappropriate considering the circumstances. He submitted that the panel have suggested that this is not a matter that is easily

remediable and whilst that may be the case, that may be a red herring when considering a sanction. He submitted that when assessing whether a registrant's insight can progress to a point where there is no longer a risk, it is not essential that the conduct need necessarily be remedied, especially conduct that has occurred so far in the past.

Mr Adamou submitted that whilst he makes no strong submissions on a conditions of practice order, he highlighted the need to start from the bottom when considering a sanction. He submitted that, in relation to a conditions of practice order, there are elements the panel may wish to consider, including that there is no general evidence of incompetence, there is a potential and willingness to respond positively to retraining, that the nurse has insight into the issue, that patients will not be put in direct danger, that there are identifiable areas of assessment and retraining and that there is no evidence of *deep seated* attitudinal issues. He submitted that any conditions imposed would need to be appropriate, workable and measurable.

Mr Adamou invited the panel to consider whether the seriousness of the case requires temporary removal from the register, in relation to a suspension order. He submitted that certain concerns are more difficult to remedy and, when considering the guidance on seriousness, the charge found proved does not fit into any of the specific categories there set out. He submitted that it is clear that the charges found proved are not the most serious in nature. There is no element of dishonesty and no evidence of any harm, although the panel found that there may have been a risk of harm.

Mr Adamou addressed a striking-off order and submitted that, while there is evidence the panel has found that you did not follow the Code or Trust policies in place, the panel has not gone so far to suggest that you did not obtain consent from patients at all. He submitted that this does not raise a fundamental question about your professionalism.

Mr Adamou submitted that you are currently a Deputy Manager at your place of work, and that it was an essential feature of your role that you were a registered nurse. He submitted that a higher sanction imposed would cause you financial hardship.

Mr Adamou submitted that you are at the start of a long road back to practising unrestricted and invited the panel to allow you the opportunity to learn and show that you are able to take those steps to address the issues.

The panel accepted the advice of the legal assessor which included reference to the case of *Cheatle v General Medical Council [2009] EWHC 645*.

### **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:

- A breach of trust.
- Some of your actions and omissions lead to an element of concealment but did not amount to dishonesty.
- A considerable period of time has passed since the incident, giving you time to develop insight, but you have only shown limited insight at this stage.
- Financial gain was part of your motivation.
- Multiple patients were involved.

The panel also took into account the following mitigating features:

- No apparent patient harm.
- An admission made at the outset of the hearing to charge 1, as well as admissions made to the Trust during the internal investigation.
- You have engaged fully with the NMC.

- Your principal intention was to help patients and improve their lives.
- There was verbal and written evidence that indicates you are a 'brilliant nurse' who 'goes above and beyond' for your patients.
- You have expressed a willingness to learn and move forward.
- The amounts of financial gain were relatively small.
- Some awareness shown by you in your reflection of the impact of your actions on the profession, and that you are remorseful and apologetic.

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.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection and public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

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

- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel considered the submissions made by Mr Adamou, however it is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining.

The panel noted that you are regarded by your former manager as a '*brilliant*' and experienced nurse, and your colleagues and patients have spoken highly of you. The panel accepted your willingness to learn from your failings and to remedy the issues. However, the panel considered that, although there is no evidence of deep-seated personality or attitudinal issues, there were concerns about the instances when you tried to deflect blame onto others. The panel is of the view that you do not yet fully understand what you need to demonstrate in order to address the concerns. The panel was concerned about the limited level of insight you have shown at this stage, despite the significant period of time that has passed since the incident occurred and noted your developing insight only became apparent during the course of your evidence. It considered that there are no clinical practice issues in this case and conditions of practice would not suitably address the concerns regarding the lack of integrity found. The panel noted the wide range of courses you have undertaken but considered that the issue is one of integrity, not lack of training. It concluded that your insight is still at a very early stage.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not satisfy the wider public interest.

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 was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. It considered the concerns, as stated above, and stressed the importance of you needing to develop a deeper level of insight and reflection. It considered that a period of suspension would allow you time to fully reflect on your actions and the impact they could have caused on patients, colleagues, the profession and the wider public, and provide evidence of this to a future reviewing panel.

The panel was of the view that a suspension order would mark the seriousness of the case and address both the public protection and public interest issues identified, uphold the standards of the profession and the confidence in the NMC as regulator. It considered that you do not have a deep-seated personality or attitudinal problem, there has been no evidence of repetition of behaviour since the incident, you have shown some insight (albeit at a very early stage), you have engaged with the NMC and you have demonstrated a willingness to learn and remedy the concerns.

The panel considered it to be very serious when a nurse acts without integrity, and in this case a suspension order would be a proportionate sanction and would protect the public whilst satisfying the public interest. It took into account that keeping a good and experienced nurse on the NMC's register is an important factor to be considered and it is in the public interest to allow you the opportunity to return to safe practice when you have been able to demonstrate sufficient insight.

The panel went on to consider 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 it would be disproportionate. Whilst the panel acknowledges that a suspension 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 as you may well lose your current employment. 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.

In making this decision, the panel carefully considered the submissions of Ms Fewins in relation to the sanction that the NMC was seeking in this case. However, the panel considered that at this stage, a striking-off order would be disproportionate taking into account its findings and the mitigation you have shown, particularly your standing amongst your colleagues and patients as a nurse of high regard.

The panel determined that a suspension order for a period of six months 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 continued engagement with the NMC.
- Your attendance at future hearings.

- A detailed reflective piece that demonstrates a deeper level of insight that address your actions and the impact they could have had on patients, colleagues, the profession and the wider public. The use of a reflective model may be of help.

## **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 Ms Fewins. She invited the panel to impose an interim order for a period of 18 months, on the grounds of public protection and the public interest, in order to cover the 28-day appeal period and the possible period of an appeal. Should you decide not to appeal the decision, the interim order will fall away following the 28-day appeal period and the suspension order will take effect.

The panel also took into account the submissions of Mr Adamou. He submitted that, whilst the panel has identified that there is a risk, and that a suspension order would be an appropriate sanction, an interim order is not necessary in the circumstances. He submitted that you have never been subject to an interim order before, and it would deprive you of the opportunity to get your affairs in order and converse with your employer to consider alternative arrangements in relation to your current role. He submitted that an interim order would '*remove you from your place of work*' with immediate effect, and considering the lack of repetition by you, it would not be necessary to impose one.

## **Decision and reasons on interim order**

The panel determined that an interim order is 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. Furthermore, the panel was of the view that an interim suspension order would not prevent you from being able to speak to your employer about alternative arrangements in relation to your current role.

Therefore, following a finely balanced discussion, the panel imposed an interim suspension order for a period of 18 months, on the grounds of public interest alone, in order to cover the expiry of the 28-day appeal period and if an appeal against this order is made until that appeal has been withdrawn or otherwise finally disposed of. It was of the view that there is no real risk of significant harm towards patients, and therefore an interim order would not need to be imposed on the grounds of public protection.

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

That concludes this determination.