

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

Substantive Hearing

**Wednesday 9 August – Friday 11 August 2023 and
Monday 14 August - Wednesday 16 August 2023**

Virtual Hearing

Name of Registrant:	Nwabisi Barango
NMC PIN	75Y2890E
Part(s) of the register:	RN2: Adult Nurse, Level 2 (July 1977) RN1: Adult Nurse, Level 1 (March 2001)
Relevant Location:	Merton
Type of case:	Misconduct
Panel members:	Anthony Griffin (Chair, Lay member) Linda Tapson (Registrant member) Judith Webb (Lay member)
Legal Assessor:	Cyrus Katrak
Hearings Coordinator:	Amie Budgen
Nursing and Midwifery Council:	Represented by Madeleine Semple, Case Presenter
Mrs Barango:	Was not present and was not represented
Facts proved:	All charges found proved
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim Suspension Order (18 months)

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Barango was not in attendance and that the Notice of Hearing letter had been sent to Mrs Barango's registered email address by secure email on 10 July 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Barango's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Mrs Barango

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

Ms Semple submitted that there had been limited engagement from Mrs Barango with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Ms Semple informed the panel that the NMC made numerous attempts to contact Mrs Barango with no response. Ms Semple told the panel that Mrs Barango last engaged with the NMC via a phone call with her case officer on 2 August 2023 where she indicated that she had not been able to access the documents via Egress. She informed the panel that these documents were then sent to Mrs Barango by post, but no further response was received.

Ms Semple submitted that Mrs Barango was also sent the Notice of Hearing but had not expressed a desire to attend today's hearing with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel decided to proceed in the absence of Mrs Barango. In reaching this decision, the panel considered the submissions of Ms Semple and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mrs Barango;
- Mrs Barango has not engaged with the NMC in relation to these proceedings and the only time the NMC was able to reach her was via phone call on 2 August 2023. Further, she has not responded to any of the letters sent to her about this hearing;

- The panel asked the hearings coordinator to confirm whether Mrs Barango has more than one registered email address, the hearings coordinator confirmed that she has two email addresses, one of which is an NHS email address. The panel noted that Mrs Barango has indicated that she has retired, and she will not have access to her NHS email address, therefore it was appropriate that the Notice of Hearing was sent to the original registered email address. This email address is one that the NMC has used with Mrs Barango previously;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There are three witnesses scheduled to attend today and one witness scheduled to attend the hearing to give live evidence tomorrow;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in March 2020 and the allegations relate to misconduct and dishonesty;
- Further, delay may have an adverse effect on the ability of witnesses to accurately recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Barango in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Barango at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Barango's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

That you, a registered nurse whilst working at Mitcham Medical Centre (the Practice):

1) On 31 March 2020:

- a) Edited Patient A's EMIS consultation record of 13 March 2020 to the effect that you;
 - i) Retrospectively recorded that the vaccination in Schedule 1 had been administered to Patient A;
 - ii) Did not make clear that the amendment at Charge 1.a.i. had retrospectively been made by you.

- b) Reported to Colleague B that:
 - i) Colleague C had:
 - a) Incorrectly given three vaccinations to Patient A during their appointment on 13 March 2020;
 - b) Documented in EMIS that the vaccination in Schedule 1 was given to Patient A on 13 March 2020;
 - c) Not documented in Patient A's Red Book that the vaccination in Schedule 1 was given on 13 March 2020.
 - ii) Relative D informed you Colleague C had given Patient A three vaccinations on 13 March 2020.

2) Your actions at any or all of Charge 1 were dishonest in that you deliberately sought to represent that:

- a) Colleague C had on 13 March 2020 administered to Patient A the vaccination in Schedule 1 when you knew that she had not;
- b) Colleague C had recorded administering the vaccination in Schedule 1 in EMIS when you knew that she had not recorded administering the same.

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

Schedule 1

Bexsero (Meningitis B) Vaccination.

Background

Mrs Barango was referred to the NMC on 11 June 2020, by Witness C, the Practice Manager at the Mitcham Medical Centre (the Practice). Mrs Barango was retained by the Practice as a Senior General Practice Nurse between 2015 and she resigned on 3 June 2020.

The alleged facts set out the nature of the allegations, namely the following:

On 31 March 2020 Mrs Barango had a consultation with Patient A and their mother, Witness A. Patient A's 'Egton Medical Information Systems' (EMIS) health record was amended to suggest Bexserco, a Meningitis B vaccine, was administered by Witness C on 13 March 2020, when it had not been. The evidence, from Patient A's red book and EMIS electronic records set out that on 13 March 2020, Witness C only administered the following two vaccines:

- Mentorix, which is Haemophilus influenza type B;

- Meningitis C and Measles Mumps and Rubella (MMR).

A local investigation followed and on 17 April 2020 Mrs Barango denied any wrongdoing. Mrs Barango suggested that someone must have hacked into the EMIS system, using her login details, and adjusted Patient A's EMIS records at the same time as she was carrying out the appointment with the patient.

On 13 May 2020 the Practice held a disciplinary hearing, Mrs Barango failed to engage in this. Then, on 3 June 2020, Mrs Barango resigned. Mrs Barango told the Practice she intended to retire. Mrs Barango has not engaged in the NMC investigation. It is unclear if she is currently working as a nurse at present.

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 Semple on behalf of the NMC.

Ms Semple submitted that the live evidence from Witness A, Witness B, Witness C and Witness D were accompanied by written statements, providing the same recall of events. She submitted that Witnesses A, B, C and D are credible sources from the time of the incident.

Ms Semple submitted that the evidence is such that the charges can be found proved and as Mrs Barango has not formally denied any of the charges. Ms Semple referred the panel to the evidence matrix which set out the evidence related to each charge.

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 the 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 A: Patient A's mother.
- Witness B: General Practice partner at the Practice.
- Witness C: Another Practice Nurse at the Practice.
- Witness D: The Practice manager.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, including his legal advice on dishonesty, with reference to the case of '*Dishonesty – Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*'. It considered the witness and documentary evidence provided by Ms Semple on behalf of the NMC.

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

Charge 1) a) i)

That you, a registered nurse whilst working at Mitcham Medical Centre (the Practice):

1) *On 31 March 2020:*

a) Edited Patient A's EMIS consultation record of 13 March 2020 to the effect that you;

(i) Retrospectively recorded that the vaccination in Schedule 1 had been administered to Patient A;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D. It had particular regard to the contemporaneous notes, the written evidence and the oral evidence from Witness D, along with the audit trails, all of which confirmed that the date that Patient A's records, written by Witness C on 13 March 2020, were altered on 31 March 2020, when the alleged incidents occurred.

The panel determined that Witness D demonstrated a broad understanding and knowledge of the EMIS system during the live evidence. It had regard to Witness D stating that it is necessary for colleagues to make it clear if their clinical notes are being made retrospectively and this could not be found in either of Mrs Barango's entries on 31 March 2020, on the EMIS system, nor the audit trails.

In all the circumstances, the panel determined that there is no evidence to suggest that Mrs Barango clearly indicated that her alteration on the EMIS system was inserted retrospectively.

The panel therefore determined that charge 1.a.i is found proved.

Charge 1) a) ii)

1) *On 31 March 2020:*

a) *Edited Patient A's EMIS consultation record of 13 March 2020 to the effect that you;*

(ii) *Did not make clear that the amendment at Charge 1.a.i. had retrospectively been made by you;*

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D.

The panel considered that Mrs Barango has denied the charge, however it determined that the contemporaneous notes, the written evidence and the oral evidence from Witness D provided a clear, detailed description of the EMIS system and audit trail that clearly shows it was Mrs Barango who inserted the edit on the date in question. Witness D outlined the mandatory steps colleagues are expected to take to ensure notes are attributed to the nurse inserting them and to indicate that the clinical notes have been added retrospectively.

The panel therefore determined that charge 1.a.ii is found proved.

Charge 1) b) i) a)

1) On 31 March 2020:

b) Reported to Colleague B that:

i) Colleague C had:

(a) Incorrectly given three vaccinations to Patient A during their appointment on 13 March 2020;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D. It had particular regard to the contemporaneous notes, the written evidence and the oral evidence from Witness B. The panel had regard to the following email from Witness B dated 3 April 2020:

'Nurse Bisi [sic] rang me on 31st March 2020. She said she has a mother and child with her who she is due to give childhood injections. She was phoning from another room as not to be heard by the mother...She claimed that Witness C had incorrectly given 3 injections during the child's recent visit...'

The panel noted that Witness B's email was dated 3 April 2020 so can be viewed as an accurate account of the incident which took place on 31 March 2020 due to the short time frame.

The panel therefore determined that charge 1.b.ia is found proved.

Charge 1) b) i) b)

1) On 31 March 2020:

b) Reported to Colleague B that:

i) Colleague C had:

(b) Documented in EMIS that the vaccination in Schedule 1 was given to Patient A on 13 March 2020;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D.

The panel determined that on 31 March 2020, Mrs Barango documented, retrospectively that Patient A's vaccination was administered on 13 March 2020 during a previous consultation with Witness C. The panel considered the clinical notes which it considered, on balance, had been made by Mrs Barango on 31 March 2020, stating the following:

'IMM -IYR MUMS [sic] THAT (Witness C) GAVE 2 INJECTION [sic] BUT EMIS-BABY IMM SAYS 3 INORDERWORDS [sic]-MEN B WAS ALSO GIVEN BUT THE RED BOOK SAYS-WRITTEN-2 -PRIOR TO GIVEN TODAYS- VERRIFICATION [sic] NEEDEDWHETER [sic] MEN B HAVE BEEN GIVEN ADVISED TO TO [sic] REBOOK APPT-TEL [sic] APPOLOGISES [sic] GIVEN TO (Witness A), (Witness B) INFORMED'.

The panel noted again, the EMIS audit provided by Witness D, that clearly attributes the insertion of the vaccination in schedule 1 to Mrs Barango and that she had reported to Witness B, that it was Witness C who had documented this on the EMIS system.

The panel therefore determined that charge 1.b.i.b is found proved.

Charge 1) b) i) c)

1) *On 31 March 2020:*

b) Reported to Colleague B that:

i) Colleague C had:

(c) Not documented in Patient A's Red Book that the vaccination in Schedule 1 was given on 13 March 2020;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D.

In its consideration of whether charge 1.b.i.c can be found proved, the panel had regard to the following email from Witness B dated 3 April 2020:

'...She said that only 2 were documented in the child's red book but 3 were documented in EMIS...'

The panel therefore determined that charge 1.b.i.c is found proved based on Witness B's email.

Charge 1) b) ii)

1) *On 31 March 2020:*

b) Reported to Colleague B that:

(ii) Relative D informed you Colleague C had given Patient A three vaccinations on 13 March 2020;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D.

The panel had particular regard to the contemporaneous notes, the written evidence and the oral evidence from Witness B. It particularly noted the following email from Witness B to Witness D dated 3 April 2020:

'...She also said that the child's mother said she had 3 injections...'

The panel determined that on the balance of probability this charge is made out in that this was what Mrs Barango clearly reported to Witness B. Witness B had informed the practice manager of this in their email of 3 April 2020.

The panel therefore determined that charge 1.b.ii is found proved.

Charge 2 a)

2) Your actions at any or all of Charge 1 were dishonest in that you deliberately sought to represent that:

(a) Colleague C had on 13 March 2020 administered to Patient A the vaccination in Schedule 1 when you knew that she had not;

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D. Further, the panel carefully considered Witness A's written and live evidence which indicated that Patient A had only received two vaccinations and that this had been documented in Patient A's red book which was shown to Mrs Barango. Further, during live evidence, Witness C remained consistently adamant that they had only given two vaccinations. Witness C and Witness D both confirmed that the chance of this insertion being caused by an error on the EMIS system is very unlikely.

The panel also determined that given the live evidence provided from Witness B, C and D, it was not plausible that a 'hacker' could have inserted the retrospective clinical note to such detail, as this insertion would have also shown on the EMIS audit trail. Further, Witness A told the panel that no other member of staff came into the consultation room during the appointment. There was no evidence before the panel to support the suggestion that a hacker could have inserted the retrospective note.

The panel determined that in light of all the previous charges being found proved, Mrs Barango's denial of those charges also amounts to dishonesty. In all of the circumstances, the panel considered that by the standards of ordinary and decent people, Mrs Barango's actions would be considered dishonest and therefore charge 2a) is found proved.

Charge 2 b)

2) *Your actions at any or all of Charge 1 were dishonest in that you deliberately sought to represent that:*

(b) Colleague C had recorded administering the vaccination in Schedule 1 in EMIS when you knew that she had not recorded administering the same.

This charge is found proved.

In reaching this decision, the panel took into account the written and live evidence from Witnesses A, B, C and D. The panel considered the contemporaneous notes, the written evidence and the oral evidence from Witness D, who stated that each member of the staff at the Practice has a separate log in and password to the EMIS system and that Mrs Barango had changed her password on 7 February 2020, and hence, the chances of her password being known to others was remote.

Further, Witness D, as a *'super user'*, provided the panel with a thorough understanding of how the EMIS system works for recording patients' treatment. The panel had particular regard to the audit trails which clearly showed that the alteration to Patient A's clinical notes was made on 31 March 2020, during the appointment time slot that Mrs Barango was given with Patient A and Witness A.

The panel noted that Mrs Barango had made the EMIS insertion from her personal EMIS account, that she failed to admit this and denied that the events occurred. Further, having found all the previous charges proved, the panel determined that by the standards of ordinary and decent people, Mrs Barango's actions would be considered dishonest and therefore charge 2b) is found proved.

Fitness to practise

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

Submissions on misconduct and impairment

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 Semple 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: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) in making its decision.

Ms Semple identified the specific, relevant standards where Mrs Barango’s actions amounted to misconduct.

Ms Semple submitted that Mrs Barango’s actions breached several parts of the Code and referred the panel to the NMC’s published guidance on impairment.

Ms Semple 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. She 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)’.

Ms Semple submitted that all four limbs of the *Grant* test are engaged.

Ms Semple submitted that any act of dishonesty in a clinical setting is enough to warrant impairment. She invited the panel to consider that Mrs Barango’s fitness to practice is impaired on the grounds of public protection and is also otherwise in the wider public interest.

In relation to public protection, Ms Semple submitted that the incidents were serious in nature, relating to dishonesty and a lack of proper conduct. Further, that Mrs Barango's failure to act honestly resulted in a risk of unwarranted harm to Patient A. Ms Semple invited the panel to consider whether Mrs Barango is liable to repeat the conduct, which was found proved, relating to dishonesty. She submitted that Mrs Barango has denied the allegations, has not provided the NMC with evidence which can demonstrate her remorse, insight, or that she has strengthened her practice. Ms Semple submitted that therefore, there is a risk of repetition of the charges found proved, inviting the panel to consider that Mrs Barango's fitness to practise is impaired on the ground of public protection.

Ms Semple submitted a finding of impairment is also otherwise in the wider public interest as a well-informed member of the public would be concerned to learn that Mrs Barango was continuing to work as a registered nurse without any form of restriction in place in light of the seriousness of the charges found proved, including dishonesty. She submitted that Mrs Barango's actions breached the Code and have brought the profession into disrepute and therefore, her fitness to practice is also impaired on public interest grounds.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

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

'8 Work co-operatively

To achieve this, you must:

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

8.6 *share information to identify and reduce risk.*

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:

10.3 *complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.*

10.4 *attribute any entries you make in any paper or electronic records to yourself, making sure they are clearly written, dated and timed, and do not include unnecessary abbreviations, jargon or speculation.*

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

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

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 Mrs Barango's actions did fall significantly short of the standards expected of a registered nurse and therefore each of the charges and sub charges found proved amount to misconduct.

In reaching its decision, the panel considered Mrs Barango's written response to the allegations made at the Practice, noting that Mrs Barango deflected the blame by suggesting, (but even when given the opportunity by the Practice, provided no evidence) that her colleagues were treating her in a discriminatory manner. The panel also considered the contemporaneous written notes and the oral and written evidence from Witnesses A, B, C and D.

The panel determined that Mrs Barango's denial that she altered Patient A's clinical notes on EMIS to suggest that Witness C had administered all three of the vaccinations to Patient A, breached the Code and amounts to serious misconduct, breaching the fundamental tenets of the nursing profession.

Further, the panel determined that the evidence of Mrs Barango's dishonesty in relation to falsifying Patient A's records retrospectively as evidenced in the audit trail, which resulted in all of the charges being proved, can be viewed as serious misconduct.

In all the circumstances, the panel determined that all the charges found proved did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel went on to decide if as a result of the misconduct, Mrs Barango's fitness to practise is currently impaired. The panel was aware that the NMC guidance as to whether a nurse's fitness to practise is impaired can be answered by considering whether the nurse can practice kindly, safely and professionally (NMC guidance on Impairment DMA-1).

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional conduct. 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.'

The panel next had regard to paragraph 76, where Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our finding 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 and/or is liable in the future to be dishonest.'

The panel considered that all four limbs were engaged.

The panel considered the factors set out in the case of *Cohen* and considered whether Mrs Barango's misconduct is such that it can be addressed. The panel took into account all of the documentation before it, including Mrs Barango's written response to the allegations made by her colleagues at the Practice, her response to the NMC on 2 August 2023, the contemporaneous written notes and the oral and written evidence of Witnesses A, B, C and D. The panel also had regard to the submissions made by Ms Semple, when determining whether Mrs Barango has addressed her misconduct.

The panel determined that Patient A was put at an unwarranted risk of harm as a result of Mrs Barango's misconduct. It determined that Mrs Barango's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that in this case, it was satisfied that confidence in the nursing profession would be undermined if its regulator did not view seriously, charges relating to dishonesty.

In relation to insight, the panel considered that Mrs Barango has had minimal engagement with the NMC during these proceedings, has not demonstrated an understanding of how her actions could have resulted in serious harm to Patient A. Furthermore, it determined

that Mrs Barango had to date not demonstrated an understanding of why what she did was wrong and how this impacted negatively on the reputation of the nursing profession. The panel noted the phone contact with Mrs Barango on 2 August 2023, during which she told the NMC that she could not understand why the case was continuing some three years later. The panel determined that this demonstrates Mrs Barango's continued lack of insight into the seriousness of her misconduct. The panel noted that Mrs Barango has not apologised and has not shown insight, or remorse. Furthermore, the panel determined Mrs Barango had to date not demonstrated how she would handle the situation differently in the future.

The panel carefully considered the evidence before it in determining whether or not Mrs Barango has taken steps to strengthen her practice. The panel took into account that Mrs Barango has not engaged with the NMC proceedings, has not provided a reflective piece, nor has she provided evidence of additional, relevant training she has undertaken to strengthen her practise. Therefore, the panel is of the view that there is a risk of repetition. Consequently, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and wellbeing 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 also required due to the risk of repetition of the charges found proved and the consequential risk of harm to patients in her care. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made in this case and therefore finds Mrs Barango's fitness to practise is also impaired on the ground of the wider public interest.

Having regard to all of the above, the panel was satisfied that Mrs Barango's fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

Ms Semple invited the panel to impose a striking-off order, as it found Mrs Barango's fitness to practise currently impaired. Ms Semple referred the panel to the NMC Guidance SAN-1 in respect of the factors to consider before deciding on sanction.

Ms Semple submitted that the charges found proved are very serious in nature, including dishonesty.

Ms Semple outlined the mitigating and aggravating features:

Mitigating

- It was an isolated clinical incident and Mrs Barango would have no direct personal gain from her actions.

Aggravating

- Mrs Barango failed to take responsibility and sought to give the impression of a colleague's failure;
- Has not demonstrated any insight, remorse or remediation;
- Mrs Barango misused her position of trust regarding patient records;
- Mrs Barango has not engaged with the NMC in relation to these proceedings;
- Mrs Barango's actions fell short of the fundamental tenets of the nursing profession.

Ms Semple submitted that it is the NMC's position that a striking off order is necessary on the grounds of public protection and in the wider public interest.

In relation to public protection, Ms Semple submitted that the charges found proved are serious in nature, relating to dishonesty and had the potential to cause serious harm to Patient A. Ms Semple submitted that Mrs Barango has not engaged with the NMC proceedings and has not provided evidence to demonstrate her insight, remorse or strengthened practice. Ms Semple submitted that the risk of repetition and risk of harm to the public in light of Mrs Barango's dishonesty and lack of remediation cannot be addressed with a caution order, conditions of practice order, or a suspension order.

Ms Semple submitted that the imposition of a striking off order is also otherwise in the wider public interest to maintain public confidence in the profession. She submitted that a well-informed member of the public would be concerned to learn that Mrs Barango was continuing to work as a registered nurse on the NMC register in light of the seriousness of the charges found proved.

Ms Semple submitted that in all the circumstances, it is the NMC's position that a striking off order is the only sanction which is appropriate and capable of protecting the public and maintaining public confidence in the nursing profession.

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

Decision and reasons on sanction

Having found that Mrs Barango's fitness to practise is 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 considered the following to be aggravating features:

- Abuse of a position of trust, including implicating a colleague by deflecting the blame at the local medical Practice level and distorting a conversation she had with a patient's relative;
- Failure to take responsibility for her actions in altering Patient A's records;
- Lack of insight into failings, as well as lack of remorse. This included Mrs Barango's failure to engage with the NMC regarding these proceedings;
- Due to the layers of dishonesty, there was a systematic pattern of misconduct over a period of time following the initial event;
- Conduct which put a vulnerable patient at risk of harm;
- The delay to Patient A's vaccination.

The panel considered the following to be mitigating features:

- The charges were part of a single episode;
- There was no direct financial gain;
- There was no evidence before the panel of any other regulatory concerns.

In relation to mitigating factors, the panel determined that although it noted that the charges were part of a single episode and there was no financial gain to Mrs Barango, the charges are very serious. Therefore, the panel was unable to give any weight to these mitigating factors and determined that in this case, the public interest outweighs this mitigation. As per the guidance, the panel gave limited weight to the fact that Mrs Barango has no previous regulatory concerns against her.

The panel first considered whether to take no further action but concluded that this would be inappropriate in view of the seriousness of the case. The panel determined that it would be neither proportionate nor in the public interest to take no further action.

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

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

- Mrs Barango has demonstrated attitudinal problems;
- Mrs Barango has not previously responded positively to attempts to support her with identified training needs. The panel noted that the Practice offered Mrs Barango support with training on the EMIS system, but she did not fully engage with this;

- The panel also determined that patients may still be put in danger either directly or indirectly under a conditions of practice order;
- In this case, conditions could not be formulated to deal with the findings of dishonesty.

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

Furthermore, the panel concluded that the placing of conditions on Mrs Barango's registration would not protect the public and adequately address the seriousness of this case.

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

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

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

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction. The panel noted that it has been three

years since the incident occurred and there is no evidence that in this period, Mrs Barango has taken the opportunity to reflect on the incident, show any remorse, develop any insight into the seriousness of her actions or strengthen her practice.

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

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

The panel determined that Mrs Barango's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Barango's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as the regulatory body.

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

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

This decision will be confirmed to Mrs Barango in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Semple. She submitted that it is necessary to impose an interim suspension order for a period of 18 months to cover the appeal period on the grounds of public protection and in the wider public interest. Further, Ms Semple submitted that although Mrs Barango has indicated that she has retired, it is unclear whether she is currently practicing as a nurse on the NMC register.

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

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's

determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the appeal period.

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

That concludes this determination.