Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Friday 4 August 2023

Virtual Hearing

Name of Registrant:	**Natalie Coles**
NMC PIN	16I7013E
Part(s) of the register:	RM: Midwife (10 October 2016)
Relevant Location:	Wolverhampton
Type of case:	Misconduct
Panel members:	Adrian Smith (Chair, Lay member) Denford Chifamba (Registrant member) Helen Eatherton (Registrant member)
Legal Assessor:	Gerard Coll
Hearings Coordinator:	Anya Sharma
Nursing and Midwifery Council:	Represented by Aoife Kennedy, Case Presenter
Ms Coles:	Not present and represented by Murtada Sabil of Thompsons Law
Consensual Panel Determination:	Accepted
Facts proved:	All (by admission)
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	**Striking-off order**

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

Details of charge

That you, a registered midwife:

1) On 30 October 2019, did not document:

a) *the plan and/or the change of plan, in respect of rupturing Person A's membranes*
b) *your request for fresh ears;*
c) *the discussions you had with Colleague A regarding Person A's care plan;*
d) *a conversation you had with Person A concerning:*
    i. *a vaginal examination which was to be conducted and/or*
    ii. *the rupturing of Person A's membranes*

2) On 30 October 2019, recorded incorrectly within Person A's record at 16.55 that you had detected a fetal heart rate of 146bpm.

3) On 30 October 2019, failed to conduct fetal heart rate assessments every 15-minutes.

4) On 30 October 2019, did not escalate concerns when the fetal heart rate could not
be detected.

5) On 30 October 2019, did not escalate concerns that you had about your own knowledge and competence.

6) Your actions at Charge 2 were dishonest in that:

a) *you knew that you had not detected a fetal heart rate at 16.55*
b) *you sought to conceal that you had not undertaken a fetal heart rate assessment every 15 minutes*

c) *you intended any reader of the patient's records to believe that you had undertaken a fetal heart assessment at 16.55*

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

Consensual Panel Determination

At the outset of this hearing, Ms Kennedy provided the panel with a background to the case and informed it that a provisional agreement of a Consensual Panel Determination (CPD) had been reached with regard to this case between the NMC and Ms Coles. Ms Kennedy confirmed that the CPD had been signed by both the NMC and Ms Coles on 20 July 2023.

Ms Kennedy informed the panel that since the incident, Ms Coles has not practised as a midwife and has indicated that it is her intention to not practise as a midwife again.

The agreement, which was put before the panel, sets out Ms Coles' full admissions to the facts alleged in the charges, that her actions amounted to misconduct, and that her fitness to practise is currently impaired by reason of that misconduct. It is also stated in the agreement that an appropriate sanction in this case would be a striking-off order. It is agreed that an interim suspension order for a period of 18 months is appropriate to cover the 28-day appeal period prior to the striking-off order coming into effect.

Mr Sabil informed the panel that Ms Coles entirely accepts her actions and that her fitness to practise is impaired. Mr Sabil set out that strike-off is an appropriate and proportionate sanction, and that Ms Coles is in agreement that she should be struck-off the NMC register.

The panel has considered the provisional CPD agreement reached by the parties.

Here ends the provisional CPD agreement between the NMC and Miss Coles. The provisional CPD agreement was signed by Miss Coles and the NMC on 20 July 2023.

That provisional CPD agreement reads as follows:

> ***Fitness to Practise Committee***
> ***Consensual panel determination ("CPD"): provisional***
> ***Agreement***
>
> *The Nursing & Midwifery Council ("the NMC") and Miss Natalie Coles, PIN 16I7013E*
> *("the Parties") agree as follows:*
>
> *1. Miss Coles is content for her case to be dealt with by way of a CPD hearing. Miss Coles does not intend to participate in the hearing and is content for it to proceed in her absence. Miss Coles' representative will attend the hearing should clarification on any point be required, or should the panel wish to make any amendment to the provisional agreement.*
>
> ***The Charges***
>
> *2. Miss Coles admits the following charges:*
>
> *That you, a registered midwife:*
>
> *1) On 30 October 2019, did not document:*
> - *e) the plan and/or the change of plan, in respect of rupturing Person A's membranes*
> - *f) your request for fresh ears;*
> - *g) the discussions you had with Colleague A regarding Person A's care plan;*
> - *h) a conversation you had with Person A concerning:*

iii. a vaginal examination which was to be conducted and/or

iv. the rupturing of Person A's membranes

2) On 30 October 2019, recorded incorrectly within Person A's record at 16.55 that you had detected a fetal heart rate of 146bpm.

3) On 30 October 2019, failed to conduct fetal heart rate assessments every 15-minutes.

4) On 30 October 2019, did not escalate concerns when the fetal heart rate could not
be detected.

5) On 30 October 2019, did not escalate concerns that you had about your own knowledge and competence.

6) Your actions at Charge 2 were dishonest in that:

d) you knew that you had not detected a fetal heart rate at 16.55

e) you sought to conceal that you had not undertaken a fetal heart rate assessment every 15 minutes

f) you intended any reader of the patient's records to believe that you had undertaken a fetal heart assessment at 16.55

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

Background

3. Miss Coles appears on the register of nurses, midwives and nursing associates maintained by the NMC, as a midwife. Miss Coles has been a registered midwife since 28 September 2016.

4. On 5 August 2020, the NMC received a referral about Miss Coles' fitness to practise from Head of Midwifery (now Director of Midwifery) at the Royal Wolverhampton NHS Trust ('the Trust').

5. At the time of the concerns in the referral, the Trust employed Miss Coles as a band 6 midwife. Having qualified as a midwife in September 2016 Miss Coles joined the Trust in January 2017 in an obstetric-led setting. Miss Coles became part of the midwifery-led unit ("MLU") on 21 October 2019. The MLU is a unit where mothers, who have normal/uncomplicated pregnancies would give birth. One-to-one care is provided without medical intervention unless there's a reason or issue detected and then care is transferred to the delivery suite. The MLU consists of five birthing suites on the floor below the delivery suite. On the MLU midwives would us sonic aids to auscultate the Fetal Heart Rate ('FHR') manually, as it is a natural birth environment.

The facts relating to the charges

Charge 1

6. On 30 October 2019 Miss Coles was assigned to the care of Person A, who was yet to give birth and was awaiting use of the birthing pool. As Person A was not in established labour at this point Miss Coles was also allocated another patient who was postnatal. Miss Coles and Colleague A, the senior midwife on duty discussed Person A at handover, and it was agreed Miss Coles would undertake an observation around 08.00 to determine the ongoing care plan for Person A.

7. Miss Coles, at approximately 08.00, conducted an observation and confirmed Person A was not in established labour but was comfortable. A vaginal examination was undertaken at 11.05 by Miss Coles, who recorded the findings in the clinical

notes at 11.22. Miss Coles made Colleague A aware that Person A was 4cm dilated but not in established labour.

8. Colleague A had a discussion with Miss Coles when Person A was 5cm dilated. Miss Coles asked Colleague A at that time if Person A's membranes should be ruptured. Colleague A stated that Person A's membranes could not be broken until another examination of the cervix had taken place, for a comparison of the two examinations. Unbeknown to Colleague A, Miss Coles had already discussed with Person A and her partner that the next step would be, to rupture Person A's membranes. Therefore, Person A and her partner were expecting this course of action. At no time did Miss Coles share the details of that conversation with Colleague A. Colleague A explained that had Miss Coles done so, she would have explained the position to Person A and her partner. Colleague A noted that any changes to the care plan were not recorded by Miss Coles in the clinical notes.

9. The clinical notes detail an entry at 13.22 when Miss Coles had recorded 'difficult to auscultate FH whilst in the pool, heard at 148bpm, will ask senior midwife to attend for fresh ears'. Colleague A confirmed that she was not asked to attend and was not made aware of any auscultation difficulties being experienced by Miss Coles.

10. Colleague B, another midwife, but not a senior midwife, was asked by Miss Coles around 13.30 to complete a first 'fresh ears' auscultation on Person A. The purpose was to check the FHR. 'Fresh Ears' are completed every hour when a woman is deemed to be in labour. In practical terms, this is a second midwife seeing the woman and auscultating the FHR to check they are happy with the FHR pattern. In short, it is a second check to ensure everything is okay with the baby's heart rate. Colleague B undertook the 'fresh ears' check just before 13.35 was and Miss Coles was asked to record the following in Person A's clinical records by Colleague B 'fresh ears performed by RM, auscultated for one full minute, the FHR was 148 bpm (beats per minute) – method doppler'.

11. Miss Coles asked Colleague B to perform another 'fresh ears' check at 15.31 in her absence. Colleague B stated that the FHR was 152bpm and asked Miss Coles to add this information to Person A's clinical notes. Subsequently Colleague B became aware that the clinical notes do not record that she undertook the 'fresh ears' check at 15.31, simply that the check had occurred.

12. Miss Coles conducted an examination at 16.30 and listened to the FHR, advising Colleague A, t hat Person A was a certain number of centimetres dilated, prompting Colleague A to undertake a normality review and 'fresh ears' check at 16.35. This was the only direct involvement Colleague A had with Person A at this time. The normality review in practical terms meant that Colleague A reviewed Person A's history noting (1) a vaginal examination at 11.05 (4 cm dilated), (2) established labour commenced at 12.30 (3) contractions frequency was recorded 3:10, (4) first examination of the cervix (second whilst in the care of Miss Coles) after labour commenced was at 16.30 (5 cm dilated) (5) the maternal pulse was 108 and FHR 157 bpm. Colleague A noted the plan was for Person A to remain on the MLU, with 'fresh ears' to be conducted hourly and by the time of the next examination of the cervix, Person A would be expected to be 7 cm dilated otherwise there would need to be discussions about artificially rupturing the membranes ('ARM'). Colleague A documented the outcome in Person A's clinical notes at 16.54.

Charge 2

13. Colleague A stated that when she made her own entry in Person A's clinical notes at 16.54, she did not see an entry timed 16.40 by Miss Coles. The entry by Miss Coles recorded the same FHR and maternal pulse as recorded by Colleague A in her entry timed 16.54. Colleague A formed the view that Miss Coles had inserted the entry timed 16.40 at some point after 30 October 2019. Colleague A

stated that regardless of her own review of Person A, Miss Coles ought to have undertaken an FHR assessment at 16.45.

14. Miss Coles indicated during the Trust's internal investigation that she had forgotten to conduct the FHR check and then had added the recording to Person A's clinical notes retrospectively to give the impression that one had been completed, when it had not. Miss Coles stated that she had panicked and was not sure why she had acted as she did.

Charge 3

15. The Trust's first stage labour guidelines sets out a requirement for 15-minute FHR auscultation, with increased frequency if there are any concerns. Miss Coles admitted that she had not undertaken the relevant checks at 15-minute intervals.

16. Ms Coles did not undertake checks at 16.45, 17.15 or 17.30, over a period of 45 minutes and nothing was documented in this respect within the clinical notes of Person A.

Charge 4

17. Miss Coles came out of Person A's room at around 17.30 and said to Colleague A, 'you're not going to believe this, I can't find the FHR'. Colleague A felt this was stated very casually and she was unsure if Miss Coles was joking. Colleague A entered Person A's room and tried to listen to the FHR but was unable to detect it. Person A was asked to move from the birthing pool to the couch However even with the change of position the FHR could not be detected by Colleague A.

18. Colleague A was under the impression that the situation had just occurred, and Person A needed an immediate transfer to the delivery suite. Miss Coles offered to make the call but was instructed to remain with Person A and to get her ready for

transfer. The transfer occurred between 17.48 and 17.49. At no time prior to 17.30 did Miss Coles raise any concerns with Colleague A about being unable to detect the FHR.

19. At the Trust, there is an expectation that a midwife would seek help from a colleague or the senior midwife, if there are any concerns in detecting the FHR. Such checks were expected to take place every 15 minutes and if Miss Coles was having difficulties in detecting the FHR, she ought to have asked another midwife to check. If on two or three occasions there was difficulty in detecting the FHR, this ought to have been escalated. It seems that Miss Coles was unable to detect the FHR for around 20 minutes at least, prior to any escalation.

20. Miss Coles ought to have known via her training, the Trust guidance and from her own experience of working on the delivery suite previously, that she was expected to intervene quickly if the FHR could not be located.

21. The Trust found that Miss Coles' record keeping was erratic and that there was a tendency by Miss Coles to record information on pieces of paper as opposed to making contemporaneous notes on the electronic system.

Charge 5

22. Colleague A stated that at the commencement of her shift that she [Colleague A] advised Miss Coles that she was available for support, advice, guidance and to answer any questions that arose during the shift. Miss Coles raised no concerns with Colleague A until 17.30 when she disclosed that she could not detect the FHR. It is unclear over what period the FHR could not be detected, as there is no documented note following the FHR review by Colleague A at 16.35. Miss Coles indicated to the Trust that she had been unable to detect the FHR for around 20 minutes.

23. Miss Coles had several opportunities to raise concerns with the Colleague A, namely at the commencement of the shift, at the vaginal examination at 11.05, at the commencement of labour care at 12.30 and when Colleague A undertook the normality review of Person A at 16.35. However, she failed to do so.

24. Miss Coles' representative at the Trust's disciplinary hearing indicated that Miss Coles had not sought help because she came from 'proud stock' and felt she would rather 'just get on with it', and her pride prevented her from escalating concerns.

25. Miss Coles moved to the MLU on 21 October 2019 from the delivery suite at the Trust and had spoken with Colleague C a few weeks prior to her move, about her concerns because she had not trained there. Miss Coles received reassurance from Colleague C during this conversation, that it was normal to be nervous when moving to a new unit, but and there was support available on the MLU.

26. During the Trust's investigation Miss Coles stated that she did not get any supernumerary time because it was a small team, with usually only 2 or 3 midwives on at any one time. No patients had given birth during her allotted time on her first few shifts, and therefore she had no experience of births in the MLU.

27. The Trust found during its investigation that Miss Coles did not seek advice, nor did she escalate any concerns with her manager once she had joined the MLU. In addition Miss Coles did not request any further training or support. Miss Coles had signed the induction pack confirming that she was competent and that she had understood the guidelines and procedures on MLU. Colleague C had signed Miss Coles off as being competent on 26 October 2019. Miss Coles had experienced both early and established labours prior to joining the MLU.

Charge 6

28. In a telephone conversation with Colleague C on 3 November 2019 Miss Coles

admitted that she had added an entry in Person A's clinical notes at 16.55 in respect of a FHR check she had not actually completed. Miss Coles stated she had done this because she had panicked knowing that she had not undertaken the relevant check.

29. The Trust's electronic data disclosed that Ms Coles had made retrospective entries in Person A's notes. This included the 17.42 entry on 30 October 2019 that the FHR was 146 bpm at 16.55 in respect of a check not actually undertaken.

30. Miss Coles admitted to the Trust, that she had added the entry to the clinical notes because she was scared it would be discovered that she had not listened to the FHR.

Misconduct

31. Miss Coles has admitted the regulatory charges and conceded that her fitness to practise is impaired.

32. ***Lord Clyde in Roylance v General Medical Council [1999] UKPC 16*** *provides guidance when considering what could amount to misconduct: '[331B-E] 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 [nurse] practitioner in the particular circumstances'*

33. Further assistance may be found in the comments of ***Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin)*** *and* ***Collins J in Nandi v General Medical Council [2004] EWHC 2317 (Admin):***

'[Misconduct] connotes a serious breach which indicates that the [nurse's] fitness to practise is impaired'

and

'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'.

34. Miss Coles has conceded that her fitness to practise is impaired by reason of her misconduct. The parties agree that the misconduct as specified in the charges falls seriously short of the standards set out in ***The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code").***

35. The Parties agree that Miss Coles' acts and omissions have breached the Code in respect of:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

8 Work Cooperatively

To achieve this, you must

8.2 maintain effective communication with colleagues

8.3 keep colleagues informed when you are sharing the care of individuals with other healthcare professionals and staff

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

This includes but is not limited to patient records. It includes all records that are

relevant to your scope of practice.

To achieve this, you must:

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written sometime after the event

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

13 Recognise and work within the limits of your competence

To achieve this, you must:

13.1make a timely and appropriate referral to another practitioner when it is in the best interests of the individual needing any action, care or treatment

13.3 ask for help from a suitably qualified and experienced healthcare professional to carry out any action or procedure that is beyond the limits of your competence

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.2 raise your concerns immediately if you are being asked to practise beyond your role, experience and training

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,

36. The parties agree Miss Coles failed to deliver fundamental care without undue delay, by failing to undertake FHR checks and failing to escalate promptly to Colleague A (the senior midwife), the fact that she could not detect the FHR for a significant period.

37. Working cooperatively with colleagues is essential for continuity of care. Miss Coles failed to ask for advice and assistance from senior colleagues who would have been in a better position to care and treat Person A.

38. Record keeping must be accurate because future treatment and care will be given based upon the patient records. Keeping accurate records is a fundamental and basic nursing task. Miss Coles made a false entry in the notes of Person A. The parties agree Miss Coles' documentation of a check that had not taken place was a falsification.

39. If Miss Coles was unsure as to how best care for Person A she should have escalated her concerns without delay and made a referral to the senior midwife on duty. This would have reduced the likelihood of harm to Person A or her unborn child.

40. [Midwives] *Nurses are obliged under the Code to always act honestly and with integrity. However, Miss Coles made a false entry in the patient's notes to conceal the fact that she had failed to conduct an assessment.*

Impairment

41. Miss Coles' accepts and the parties agree that her fitness to practise is currently impaired by reason of her misconduct.

42. Consideration has been given to the nature of the concern by looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;

"Do our findings of fact in respect of the [nurse'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:

i. 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
ii. Has in the past brought and/or is liable in the future to bring the professions into disrepute; and/or
iii. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the professions; and/or
iv. Has in the past acted dishonestly and/or is liable to act dishonestly in the future?

43. The Parties agree that all four limbs are engaged in this case. Dealing with each in turn:

Public Protection

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;

44. In accordance with ***Article 3(4) of the Nursing and Midwifery Order 2001*** *("the Order") the overarching objective of the NMC is the protection of the public.*

45. The Order states:

The pursuit by the Council of its overarching objective involves the pursuit of the following objectives-

(a) to protect, promote and maintain the health, safety and well-being of the public;

46. The case of Grant makes it clear that the public protection must be considered paramount, and Cox J stated at para 71:

"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 ……"

47. There is evidence that Miss Coles' actions caused potential harm to Person A and
her unborn baby. By not undertaking the auscultation of the FHR at the required intervals there was a delay in recognising that the FHR could not be detected. Further, by not immediately escalating the fact that the FHR could not be detected, precious time was lost in taking appropriate action. Sadly, Person A's unborn baby subsequently died.

48. Miss Coles is unable to demonstrate safe and effective practice since the events outlined in the charges and therefore there remains a risk of repetition and unwarranted risk of harm.

Public Interest

49. In accordance with Article 3(4) of the order the Council's overarching objective includes
(b) to promote and maintain public confidence in the professions

regulated under this Order; and
(c) to promote and maintain proper professional standards and conduct for members of those professions.

*The case of Grant (the comments of **Cox J in Grant** at paragraph 101) makes it clear that the public interest must be considered separately at the impairment stage.*

"The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case."

And Cox J emphasised at para 71 'the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession'

50. Upholding and protecting the wider public interest includes (1) the promotion and maintenance of public confidence in the nursing and midwifery professions and (2) the declaration and maintenance of proper and professional standards. This includes ensuring that registrants act in accordance with the professional Code. Miss Coles' acts and omissions as outlined above fell far below the below the standards expected of a registered midwife Such misconduct undermines the public's trust and confidence in the profession and could result in patients and members of the public being deterred from seeking assistance or treatment from midwives.

Has in the past brought and/or is liable in the future to bring the medical profession into disrepute

51. Registered professionals occupy a position of privilege and trust in society to be responsible for the care of patients. Miss Coles accepts that her misconduct which involved failing to provide the fundamentals of care promptly; failing to escalate immediately serious concerns to a more senior colleague and breaching the duty of candour has brought her own reputation and that of the profession into disrepute. In the absence of remediation, the risk of repetition remains.

Breaching the fundamental tenets of the profession

52. The Code divides its guidance for nurses, midwives, and nursing associates in to four categories which can be considered as representative of the fundamental principles of nursing care. These are:

a) Prioritise people
b) Practise effectively
c) Preserve safety and
d) Promote professionalism and trust

53. Miss Coles agrees that she has breached the fundamental tenets of the profession by (1) not prioritising the care of Person A and her unborn baby; (2) not practising effectively and preserving safety by failing to refer matters promptly and appropriately to senior colleagues; and (3) failing to promote professionalism by breaching the duty of candour.

54. In the absence of steps taken to strengthen practice or remediation the parties agree that Miss Coles is unable to demonstrate safe and professional practice and the risk of repetition remains.

Dishonest actions

55. Honesty is considered to be the bedrock of the nursing and midwifery professions. Miss Coles created a false record in an attempt to conceal her failings and thereby deliberately breached the duty of candour when things had gone wrong. In the absence of steps taken to strengthen practice or remediation the risk of repletion of such conduct remains.

Remorse, reflection, insight, training, and remediation

56. NMC guidance adopts the approach of ***Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin)*** *namely (i) whether the concerns are easily remediable; (ii) whether they have in fact been remedied; and (iii) whether they are highly unlikely to be repeated.*

57. The Parties have considered the NMC's guidance entitled ***'Insight and strengthened practice' (FTP-13****) states, "Evidence of the nurse, midwife or nursing associate's insight and any steps they have taken to strengthen their practice will usually be central to deciding whether their fitness to practise is currently impaired".*

58. In addition there is guidance on ***'serious concerns which are more difficult to put right' (FTP-3a),*** *which includes a breach of the duty of candour by falsifying records which is attitudinal in nature.*

59. The parties considered to what extent Miss Coles had reflected upon events and had demonstrated insight into the charges, together with any steps taken to strengthen her practice and remediate the concerns.

60. Miss Coles engaged with the NMC and made admissions to the regulatory concerns on 31 January 2022 and in her application for voluntary removal dated 1 March 2022. Miss Coles confirmed that she had not practised as a midwife since the incident on 30 October 2019, nor is it her intention to ever do so again. Miss

Coles expressed remorse for her actions and detailed the impact the consequences have had on her own mental health.

61. Miss Coles provided a reflective piece in April 2022 whereby she acknowledged there were omissions in the care provided by her to Person A. Miss Coles stated this was a result of her inexperience and lack of confidence in delivering low risk care, because her previous experience was in the obstetric-led care in the delivery suite. Miss Coles recognised that her own reticence to ask for help impeded her actions, because she did not want to risk of being criticised by her colleagues. Miss Coles understood and appreciated that her reticence was a failing on her part and not her colleagues, as she did not disclose her discomfort and lack of knowledge to them. Miss Coles deeply regretted not detecting the warning signs that would have indicated that she was required to take additional action to safeguard Person A and her baby.

62. Miss Coles acknowledged that she was not confident or explicit enough when she expressed her concerns to the MLU manager. Regardless, Miss Coles accepts she is accountable for her own omissions and failings and ought to have sought more support. Miss Coles stated she did not set out to deliberately cause harm but accepted responsibility for her actions and errors leading up to the devastating outcome for Person A and her baby.

63. Miss Coles recognised that she ought to have escalated matters sooner when she could not detect a FHR and she had erroneously relied upon Colleague A's normality review when a FHR was detected.

64. Miss Coles expressed remorse and shame at having inserted a false entry in the patient records, saying that such actions were totally out of character and unacceptable, for which there was no excuse. It was simply a moment of blind and consuming panic when she realised her colleague could not detect the FHR. On

return to the department on 3 November 2019, to complete her statement she realised the seriousness of her actions and reported this to Colleague C immediately.

65. Miss Coles advised she has changed her career to become a clinical service manager and this role does not require nursing registration.

66. In the case management form dated 8 June 2023, Miss Coles admitted the charges and agreed that her fitness to practise was impaired.

67. Despite the remorse, regret, reflection and developing insight expressed and demonstrated, Miss Coles has not fully addressed the impact of her actions and omissions upon Person A, the general public and the profession as a whole. She has removed herself from midwifery and is unable to demonstrate safe, effective and professional practice which would form the basis of strengthened practice or remediation. In summary the Parties agree that a reasonable and fully informed member of the public would expect a finding of impairment and restriction of practice to follow. Any other outcome would undermine confidence in the profession and be insufficient to declare and maintain proper professional standards of conduct. A finding of impairment is therefore necessary on the grounds of public protection and public interest.

Sanction

68. Whilst sanction is a matter for the panel's independent professional judgement, the Parties agree that a striking-off order is the appropriate and proportionate sanction in the circumstances of this case.

*69. In reaching this agreement, the Parties considered the '**NMC's Sanctions Guidance'** ("the Guidance") (SAN-11), bearing in mind that it provides guidance and not firm rules. The panel will be aware that the purpose of sanctions is not to*

be punitive but to protect the public and satisfy the wider public interest considerations.

70. The aggravating features of this case have been identified as follows:
i. Conduct which put patients at risk of suffering harm
ii. Breach of duty of candour.

71. The mitigating feature of this case are identified as follows:
i. Genuine remorse and regret
ii. Developing insight based on reflection

72. Considering each sanction in turn starting with the least restrictive:

a. ***No further action (SAN-3a)*** *– The Parties agree that taking no further action would be wholly inappropriate in view of the public protection issues identified. Such a sanction would not mark the seriousness of the relevant conduct and would be insufficient to maintain public confidence in the profession and maintain professional standards.*

b. ***Caution Order (SAN-3b)*** *– The Parties agree that a Caution Order would be insufficient to protect the public or mark the seriousness of the misconduct. It is not a case at the lower end of the spectrum of impaired fitness to practise. Such a sanction would be insufficient to maintain public trust and confidence in the profession and its regulation.*

c. ***Conditions of Practice Order (SAN-3c)*** *– The Guidance says that a conditions of practice order is appropriate when the concerns can be remediated. In this case, whilst there are identifiable concerns capable of remediation, such as supervised practice and a period of retraining and support. Miss Coles has removed herself from practice and in any event the matters of dishonesty could not be appropriately addressed in this way.*

d. ***Suspension Order (SAN-3d) –*** *Miss Coles' conduct is fundamentally incompatible with continuing to practise as a professional, given the failings of care and her dishonest action in seeking to cover up her failings. Her trustworthiness and professionalism have undoubtedly been called into question in breaching the duty of candour. Whilst the misconduct took place over a relatively short period of time temporary removal from the register would be insufficient to protect the public and satisfy the wider public interest considerations.*

e. ***Striking-Off Order (SAN-3e)*** *– A striking-off order is the appropriate sanction in this case. The misconduct concerned raises fundamental questions about Miss Coles' professionalism and trustworthiness. Public confidence in the profession and in the NMC could not be maintained if Miss Coles were not removed from the Register. The un-remediated serious failings in care and the breach of the duty of candour constitute misconduct which is incompatible with continued registration.*

Referrer's comments

72. The NMC contacted the referrer by email dated 14 June 2023 seeking comments in respect of the proposed agreed striking off order. In an email dated 20 June 2023 the referrer expressed support for the agreed order.

Interim order

73. An interim order is required in this case. The interim order is necessary for public protection and is otherwise in the public interest. The substantive order will not come into effect until some 28 days after the hearing and should Miss Coles lodge an appeal within the relevant period, the substantive order would not come into effect pending a resolution of the appeal. This would permit

Miss Coles to practise without restriction during this time and would therefore fail to provide protection for the public or take account of public interest considerations. It is agreed that an interim suspension is required for a period of 18 months because it is likely to take that amount of time for the appeal to be heard.

74: The parties understand that this provisional agreement cannot bind a panel, and that the final decision on findings of fact, impairment and sanction is a matter for the panel. The parties understand that, in the event a panel does not agree with this provisional agreement, that admissions to the charges and the agreed statement of facts set out above, may be placed before a differently constituted panel to determined, provided that it would be relevant and fair to do so.

Decision and reasons on the CPD

The panel decided to accept the CPD.

The panel heard and accepted the legal assessor's advice. Ms Kennedy referred the panel to the 'NMC Sanctions Guidance' (SG) and to the 'NMC's guidance on Consensual Panel Determinations'. She reminded the panel that they could accept, amend or outright reject the provisional CPD agreement reached between the NMC and Ms Coles. Further, the panel should consider whether the provisional CPD agreement would be in the public interest. This means that the outcome must ensure an appropriate level of public protection, maintain public confidence in the professions and the regulatory body, and declare and uphold proper standards of conduct and behaviour.

The panel noted that Ms Coles admitted the facts of the charges. Accordingly, the panel was satisfied that the charges are found proved by way of Ms Coles' admissions, as set out in the signed provisional CPD agreement.

Decision and reasons on impairment

The panel then went on to consider whether Ms Coles' fitness to practise is currently impaired. Whilst acknowledging the agreement between the NMC and Ms Coles, the panel has exercised its own independent judgement in reaching its decision on impairment.

The panel first considered misconduct. It determined that the regulatory charges in this case are very serious. It was in agreement with the breaches of the Code as set out in the CPD and that Ms Coles' actions amounted to misconduct. In this respect, the panel endorsed paragraphs 31 to 40 of the provisional CPD agreement in respect of misconduct.

The panel then considered whether Ms Coles' fitness to practise is currently impaired by reason of misconduct.

The panel noted that Ms Coles accepts that her fitness to practise is currently impaired by reason of her misconduct. The panel further considered that Ms Coles is not currently working and has no intention to return to midwifery. The panel therefore determined that Ms Coles' fitness to practise is currently impaired by reason of her misconduct. In this respect, the panel endorsed paragraphs 41 to 67 of the provisional CPD agreement.

Decision and reasons on sanction

Having found Ms Coles' 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:

- Conduct which put patients at risk of suffering harm

- Breach of duty of candour.

The panel also took into account the following mitigating features:

- Genuine remorse and regret
- Developing insight based on reflection

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Ms Coles' 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 Ms Coles' misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Coles' registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel considered that Ms Coles has removed herself from midwifery practice and does not intend to return to working as a midwife. It also noted that the matters of dishonesty in this case could not be appropriately addressed by way of conditions of practice. Furthermore, the panel concluded that the placing of conditions on Ms Coles' registration would not adequately address the seriousness of this case and would not protect the public.

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

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

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

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

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

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

Ms Coles' actions were significant departures from the standards expected of a registered midwife, 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 Ms Coles' actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel agreed with the CPD that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Coles' actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered midwife 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 midwife.

This will be confirmed to Ms Coles in writing.

Decision and reasons on 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 Ms Coles' own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the

facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel agreed with the CPD 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 28-day appeal period.

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

That concludes this determination.