Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday 17 July 2023 – Monday 31 July 2023

Virtual Hearing

Name of Registrant:	**Samuel Thomas Haward**
NMC PIN	07F2356E
Part(s) of the register:	Registered Nurse – Sub Part 1 Mental Health – Level 1 (19 February 2008)
Relevant Location:	Swindon
Type of case:	Misconduct and Conviction
Panel members:	Rachel Onikosi (Chair, Lay member) Richard Weydert-Jacquard (Registrant member) Seamus Magee (Lay member)
Legal Assessor:	Juliet Gibbon
Hearings Coordinator:	Amanda Ansah
Nursing and Midwifery Council:	Represented by George Skinner, Case Presenter
Mr Haward:	Present and represented by Susan Cavender, of Counsel
Facts proved:	All Charges
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	**Suspension order (9 months)**
Interim order:	**Interim suspension order (18 months)**

Details of charges

That you, a Registered Nurse:

1. On 26 February 2020 were convicted of committing an act/series of acts with intent to pervert the course of public justice at Swindon Crown Court.

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

2. On 17 September 2015, at Chalkdown House, did not respond appropriately and/or provide CPR to Patient A as required.

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

Background

The charges arose whilst you (Registrant A) were employed as an agency Registered Mental Health Nurse by Chalkdown House (the unit), a brain injuries rehabilitation unit run by West London Mental Health Trust (the Trust). The NMC opened a referral on 12 November 2018 based on information it received from Wiltshire Constabulary regarding an incident that occurred at the unit.

On 17 September 2015, Registrant B attended for a night shift at the unit and was given a handover around 8:45pm in the evening. The unit was understaffed as two members of staff had accompanied a patient to hospital and at least one other member of staff was running late for their shift by prior agreement. There was a specific patient, Patient A, who required checks to be carried out on him every 15 minutes. Registrant B carried out a check on Patient A at 9:15pm and noted that he was in the room and was alive at that stage.

On the same day, 17 September 2015, you attended for a night shift at the unit and shortly after arriving, approximately 9:45pm, you were informed by a support worker that she had found Patient A hanging in his room. The support worker was carrying out routine checks on patients within the unit.

You attended Patient A's room, released him from the ligature around his neck and placed him on the floor. You did not immediately commence cardiopulmonary resuscitation (CPR), but instead went to the office where you called 999 and asked for the police at which point Registrant B could hear you saying that there had been a death on the unit. Registrant B took over the call and was asked by the 999-operator if resuscitation of Patient A had commenced. Registrant B can be heard in the recording of the 999-call asking others in the background if CPR has commenced and replying to the operator that it had not.

Paramedics attended the unit a short time later and despite their efforts in attempting to resuscitate Patient A, this was unsuccessful. Patient A was unfortunately declared deceased. Yourself, the support worker who had found Patient A, and Registrant B, all told the police and coroner that CPR attempts had commenced on Patient A as soon as he was found and before calling 999. On receipt of that information, the police were suspicious of these accounts as they differed from the account that was given to the 999 operator. As a result, the police commenced an investigation. You gave a statement and interview to the police reiterating your account that resuscitation attempts on Patient A had commenced before the 999 call was made. The support worker and Registrant B also gave accounts to the police supporting this version of events.

Registrant B was initially interviewed by the police on 22 February 2016 when she gave an untruthful version of events. However, a few days after her initial interview, she contacted the police again through her solicitor and asked to be reinterviewed. This interview took place on 25 February 2016, when Registrant B informed the police that CPR had not in fact been attempted prior to the 999 call and stated that her previous account was untrue. Registrant B further stated that she had previously lied and supported your version of

events at your request as you feared the consequences for you and your family, were it to be found out that you had not immediately attempted to resuscitate Patient A upon finding him. You were charged with perverting the course of public justice and convicted after a trial at Swindon Crown Court on 20 February 2020. You were sentenced on 21 July 2020 to 21 months imprisonment, suspended for 24 months, with 270 hours of unpaid work and in light of this conviction, dismissed from your employment.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Cavender, on your behalf, who informed the panel that you made full admissions to the charges.

As charge 1 concerns your conviction, and having been provided with a copy of the certificate of conviction, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3) of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel therefore finds Charge 1 proved by way of your admission and the certificate of conviction, and Charge 2 proved by way of your admission.

The panel also heard evidence from you under affirmation.

Fitness to practise

Having announced its findings on the facts, the panel then considered whether, on the basis of the facts found proved, your fitness to practise is currently impaired by reason of your conviction in relation to Charge 1, and whether the facts found proved in relation to Charge 2 amount to misconduct, and, if so, whether your fitness to practise is also currently impaired on that basis. 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, if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Skinner referred the panel 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.'* He also referred the panel to the cases of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Mallon v General Medical Council* [2007] CSIH 17 and *Calhaem v General Medical Council* [2007] EWHC 2606, which all provide definitions of misconduct.

Mr Skinner invited the panel to take the view that the facts found proved in Charge 2 amount to misconduct. He invited the panel to have regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) (the Code) in making its decision.

Mr Skinner identified the specific, relevant standards where your actions amounted to misconduct. Mr Skinner submitted that your actions in Charge 2 amount to misconduct because they fall naturally into the definitions provided by the case law outlined above. He submitted that you failed in your duty to respond appropriately to Patient A and this failure falls short of what would have been proper in the circumstances; therefore, constituting a serious breach and inadequate performance.

Mr Skinner submitted that the first charge regarding your criminal conviction following your actions in a clinical setting, also amounts to misconduct. He submitted that the seriousness of this charge can be best shown by the sentence imposed. Mr Skinner reminded the panel that you received a suspended sentence of imprisonment, which highlights the seriousness of your actions as the sentencing judge found that your offence had crossed the custody threshold. You received a sentence of 21 months imprisonment, suspended for 24 months with 270 hours unpaid work. This conviction came after trial, with the sentencing date being on 21 July 2020.

Mr Skinner further submitted that as a result of your actions and your conviction, you have breached specific parts of the NMC code. He reminded the panel that it can consider any parts of the code that it deems fit, however the NMC submit that you have breached the following specific parts:

> ***'1 Treat people as individuals and uphold their dignity***
> *To achieve this, you must:*
>
> *1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay.'*

Mr Skinner submitted that this is engaged specifically in relation to Charge 2, as it is known that you delayed in giving treatment, assistance, or care when the situation with Patient A was discovered.

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

Mr Skinner submitted that your actions were not in the best interests of Patient A and their family as a result of your lies. He further submitted that you did not consider your colleagues and the wider public when taking the actions that you did.

'7 Communicate clearly

8 Work cooperatively

To achieve this, you must:

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

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

To achieve this, you must:

14.1 act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm

15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.3 take account of your own safety, the safety of others and the availability of other options for providing care

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

Mr Skinner submitted that this specifically applies to your failure to act without delay in the circumstances outlined within Charge 2.

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

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

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

23 Cooperate with all investigations and audits'

Mr Skinner further submitted that in terms of seriousness, the misconduct put forward by the NMC along with breaches of the Code, denotes a serious level. He submitted that this was not some minor breach of the Code; your actions and misconduct were serious in terms of the consequences both in the specific clinical context and also in the criminal proceedings that followed.

Ms Cavender submitted that you accept the facts set out in Mr Skinner's submissions in that you did not carry out CPR on Patient A before calling 999, but you maintain that you did so after the call had been made. She added that it is important that the panel note that you can only respond to the evidence produced ahead of time, and you have responded appropriately to that. This included the second police interview of Registrant B, which arose as a result of her informing the police that she wanted to tell the truth. In that interview she maintained that she had taken over the CPR of Patient A from you, which commenced after the 999-call had been made. Ms Cavender reminded the panel that there is no evidence that Patient A would have survived if CPR had commenced immediately.

Ms Cavender submitted that you acted appropriately initially, but it was then subsequently because of your panic that your failings arose. She told the panel that, by prior arrangement, you had arrived to work late that night and did not know about the staff

shortages as you were not present during the handover. Consequently, you did not realise that Patient A was on suicide watch. You started out your checks on Patient A correctly, you took him down and checked for vital signs of life. It was then that you panicked and went to get help because nobody had responded to your call for assistance. Ms Cavender submitted that you accept misconduct, but regarding how serious the misconduct is in these circumstances, she invited the panel to find that it is not as serious as submitted by Mr Skinner because you began your treatment of Patient A correctly as per your training.

Submissions on impairment

Mr Skinner addressed the panel on the issue of impairment and reminded the panel to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* [2007] EWHC 581 (Admin).

Mr Skinner began his submissions on impairment by reminding the panel that current impairment is not defined in the Nursing and Midwifery Order 2001 or the NMC Fitness to Practise Rules 2004, but the NMC has defined fitness to practise as the suitability of a registrant to remain on the register without restriction.

Mr Skinner referred the panel to the judgement of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in which she referred to Dame Janet Smith's “test” which reads as follows:

> *‘Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:*

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Mr Skinner submitted that with regards to part a) of the test, your actions and failures did put people, specifically Patient A, at unwarranted risk of harm and involved a serious departure from standards. He further submitted that there was no evidence that Patient A could have been successfully resuscitated had CPR been commenced immediately upon finding him. However, there is still an expectation that nurses act appropriately in emergency situations. It is a fundamental nursing skill to provide resuscitation to a patient in the circumstances that you found yourself in. Mr Skinner therefore submitted that these failings are likely to cause risk to patients in the future if they are not addressed and as such, the first part of the test is satisfied by your actions.

Regarding part b) of the test, Mr Skinner submitted that your actions outlined in both of the charges, undoubtedly brought the profession of nursing into disrepute, and satisfy this part of the test. He told the panel that you have fundamentally contravened the expectation of a Registered Nurse to behave professionally. Mr Skinner further submitted that you had brought the profession into disrepute both as a result of your misconduct in failing to provide CPR to Patient A on 17 September 2015, and also as result of your criminal conviction for perverting the course of criminal justice. He also submitted that your actions were a breach of the professional duty of candour to be open and honest when things go wrong. Mr Skinner also submitted that it is difficult to imagine a more serious, fundamental

breach of the duty of candour than lying to police on numerous occasions, along with the local investigation, about your resuscitation of Patient A. He submitted that the panel should have in mind that you maintained this lie for a number of years, all the way through the trial and also when interviewed by the probation service in preparation for sentencing.

Mr Skinner submitted that with regards to part c) of the test, you have breached the fundamental tenets of the nursing profession due to the breaches of the Code outlined above. He submitted that the overarching point is that your actions clearly breached the fundamental tenets of the profession and satisfy this part of the test.

Mr Skinner submitted that in regard to part d) of the test, the panel will no doubt be aware that the dishonesty is central to this case, given that you acted dishonestly, in outlining your version of events to various different sources, in a falsified way. Mr Skinner reminded the panel that you were dishonest in your witness statement to the police in October 2015. You were again dishonest in your police interview in 2016, and in 2018 you answered no comment in a police interview to questions that were put to you. You were also asked questions as part of a separate interview for a local investigation. This interview took place on 27 October 2015, and you then again provided the same version of falsified events. You eventually went to trial on the matter of perverting the course of public justice and were convicted by a jury.

Mr Skinner submitted that your prolonged dishonesty is a particularly egregious form of dishonesty as you showed no regard to patient care or safety, including no regard for Patient A's family, and you acted only in your own interests. Further, your denial also appears to have continued beyond your conviction, as is mentioned in the sentencing remarks. Mr Skinner drew the panel's attention to the sentencing remarks in which reference is made to a denial of your actions in the interview with the probation officer in the preparation of the pre-sentence report. When you were asked about the reasoning for your lies, you said that you were anxious, and you would not repeat your actions in future. Mr Skinner submitted that the panel will no doubt be aware that given the history of your

dishonesty, especially with regard to the persistence, you are liable to be dishonest in the future therefore satisfying this part of the test also.

Mr Skinner went on to remind the panel that it should consider the need to uphold proper standards and public confidence, and whether these will be undermined if impairment were not found. He submitted that these would be undermined if impairment were not found in the case of an experienced registered nurse who acted in the way that you did in this matter.

Mr Skinner further submitted that the panel should consider the case of *Cohen v General Medical Council* [2007] EWHC 581 (Admin) in which it was stated that:

> *"... It must be highly relevant in determining if a doctor's fitness to practise is impaired that first his or her conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."*

Ms Skinner submitted that in considering the above statement, the panel need to consider any risk of repetition and note that you repeated a falsified version of events on a number of occasions. He further submitted that this therefore represents a repeated course of events, where the risk of repetition is not only present but shown directly by your actions and that of Registrant B's actions. He reminded the panel that you appear to have continued to deny the clinical failings even after the conviction following the trial. There is reference in the sentencing remarks to you having denied the alleged actions in the interview with the probation officer for the preparation of the pre-sentence report.

Mr Skinner further submitted that your continued denial is also somewhat suggested in the written reflective account where reference is made to part 23 of the Code. In this part, you seem to suggest the extent of your dishonesty was to fail to give the police the correct chronology of events, rather than purposefully attempting to deceive. Mr Skinner submitted that given the evidence you provided in the course of this substantive hearing, the panel may feel that you are still not being honest. Although you suggest you have learned and undertaken further training, Mr Skinner submitted that the panel may not

believe that the reason for your dishonesty was your anxiety. Therefore, the panel may think you may repeat these actions if another situation such as the one before the panel arises. This could be said to apply to both the dishonesty element and the failure to administer the CPR charge.

Mr Skinner reminded the panel that it could also note the NMC guidance *'Can the concern be addressed?'* in which it is stated that conduct which undermines the public confidence in the profession and where there is an underlying attitudinal problem may not be able to be addressed. These include criminal convictions leading to custodial sentences, dishonesty particularly if serious, sustained and linked to your practice. All these are features of the conviction you received and therefore the panel may feel that this concern cannot be addressed in the ways you set out.

Mr Skinner submitted that in light of the above you are currently impaired by reason of your conviction and by reason of your misconduct in Charge 2.

Ms Cavender submitted that the question that will help a panel to decide whether a professional's fitness to practice is impaired is "*can a nurse, midwife or nursing associate practice kindly, safely and professionally?*". She added that, unusually, in this case, the facts are admitted to the extent outlined and it is a question of course, which relates to whether you are currently impaired.

The panel will no doubt bear in mind that in your case, the night in question is now eight years ago and that you have practiced without restriction or any professional complaint since 2009 when you qualified.

Ms Cavender reminded the panel that it is not the aim of these proceedings to punish a professional for past events, but to look forward. She submitted that there are various factors which the panel need to consider and also referred the panel to the test set out in *CHRE v NMC and Grant.*

Regarding limb a) of this test, Ms Cavender submitted that there is no evidence that Patient A sadly could have survived even with immediate CPR, and this is not to downplay the failure set out in Charge 2, but to put the circumstances into context. She referred the panel to Dr Bailey's report within the prosecution bundle in which it is stated that resuscitation is very unlikely to have been successful if more than a maximum of 20 minutes had elapsed and, in this case, it could have been up to 48 minutes.

Ms Cavender went on to remind the panel that in your oral evidence you explained that this incident changed your practice in that you are now hyper vigilant about ensuring that staff are trained in emergency resuscitation. You are aware of the positioning of equipment, and you would be far better equipped both in your personal knowledge and in your awareness of other people on whichever unit you are working. You want to ensure that these circumstances are never repeated. She also told the panel that these proceedings, including the court case, have made you reassess your behaviour and you have been very clear that never again will you try to lie your way out of trouble, and this behaviour will not be repeated.

Ms Cavender submitted that in regard to limb c) of the test, past breaches cannot be denied because acting with honesty and integrity are fundamental principles of the nursing profession and you have admitted your past breach, which was faced squarely in the criminal courts and will not reoccur. She reminded the panel that these proceedings are not intended to serve as a punishment as this has been dealt with by the Crown Court and the panel have heard confirmation that all aspects of your sentence have been properly completed.

Ms Cavender submitted that in regard to limb d) of the test, there is no denying that this limb is central to the case and reminded the panel that where dishonesty is involved, as admitted here, it must decide on your state of mind at the time. She submitted that the context is very important as you arrived late by arrangement without a handover and were then immediately drawn into a completely unexpected emergency. You were called almost as soon as you arrived on the unit to find a truly shocking scene regarding a patient you

knew well and acted correctly in taking the body down and checking for signs of life. You then panicked and instead of immediately starting CPR, went to get help.

Ms Cavender submitted that you accept that in your frantic state of mind you sought to find external help rather than falling back on your own training and resources and that was wrong. She reminded the panel of your explanation in regard to how you were feeling. You were frightened and Registrant B described you as "*distressed, pacing about not knowing what to do*". Further, you described it as feeling a "*total loss of confidence*" and repeatedly used the word confused. Ms Cavender submitted that you were thrown into a maelstrom of emotions which prevented you from acting properly and that is how the lie was born. At that early stage and for many months after, yourself, the support worker and Registrant B were all colluding in an attempt to save your careers and the lie took hold. In your case, it was not rectified even up to and to the end of the Crown Court trial. Ms Cavender further reminded the panel that in your evidence you described just how frightened you were from the outset from the minute you realised how serious the potential consequences were of simply having a death on the ward when you were present.

Ms Cavender reminded the panel that in your first interview on 26 February 2020, the day after Registrant B's second interview, you were told by the police that you were being interviewed for gross negligence manslaughter and perverting the course of justice which was a terrifying prospect for you. You were concerned about the impact such charges would have on your family should you be convicted of them. Your solicitor told you that you were facing a lengthy prison sentence if convicted of gross negligence manslaughter. It is clear from the CPS final review notes in the prosecution bundle that gross negligence manslaughter charges were very carefully considered. Ms Cavender then submitted that it would be understandable in these circumstances that even an experienced nurse could panic. You therefore tried to cover your tracks, initially with Registrant B's assistance, and then once the course was set you were overcome with the full weight of the criminal justice system bearing down on you and unable to work out how to escape it.

Ms Cavender submitted that you feared losing your job, the means by which you support your family, everything you worked for should the truth come out and ending up where you are today in front of a fitness to practise panel. This fear drove you for the next few years and as once lies are entered into and become difficult to withdraw, you were apparently unable to do anything other than persist with the falsehood in the hopes that the allegation would somehow go away. Ms Cavender submitted that this context surrounding your lie is important, but so is the fact that you now clearly see that your actions were wrong, and you assured the panel of this in your oral evidence. Ms Cavender further submitted that you will never again repeat the dreadful mistakes, you have learnt from them, and are not liable to be dishonest in the future.

Ms Cavender went on to submit that the panel will wish to resolve the conflict which has arisen in the oral evidence of Registrant B and the version she gave in her second interview on 25 February 2016. Ms Cavender invited the panel to bear in mind that Registrant B's solicitors made a request for her to be reinterviewed to correct the lies she had told in the first interview earlier that week. She submitted that this second interview was specifically organised in order for the truth to be told and Registrant B had a detailed account of how, after the call to 999 had been made, she went to Patient A's room and found you already giving CPR to Patient A.

Registrant B gave further details in that interview explaining how you both took it in turns to administer CPR up until the ambulance arrived and the panel should consider that by that stage, not only did Registrant B have no reason or motive to lie, but she was specifically in the police station, to set the record straight by telling the truth. Ms Cavender invited the panel to conclude that this account is the correct one and Registrant B's attempt to retract from it when giving evidence in the hearing may perhaps be borne out of an unwillingness to give you any credit for your actions that night given that she blames you for the lies that she told following the incident.

Ms Cavender submitted that in considering whether a finding of current impairment is required to uphold proper professional standards and maintain public confidence in the

profession, the panel should note that criminal convictions are always and rightly seen as very serious. However, perverting the course of public justice is not, in fact, one of the specified offences listed in the NMC guidance. Although this does not downplay what you did, it should emphasise that whilst it is a serious conviction, it is it is not one of the most serious offences and the panel may consider that cases of dishonesty fall into a category of their own.

Ms Cavender referred the panel to the cases of *Professional Standards Authority v (1) GMC & (2) Uppal* [2015] EWHC 1304 (Admin) (Uppal) and of *Professional Standards Authority v (1) NMC & O'Neill* [2017] CSIH 29 (O'Neill) which are relevant when considering a single act of dishonesty. In the Uppal case, the panel concluded that a trainee doctor's fitness to practise was not impaired as it was an isolated episode, they had demonstrated insight and taken steps to avoid repetition. So, in that case where there was evidence of her exemplary professional and personal conduct from her senior colleagues and trainers, it was fair that fitness to practice was not found impaired.

Ms Cavender also told this panel that when assessing this doctor's impairment, that panel made observations about the nature of the misconduct, which in that case related to an isolated incident over a short period more than two years previously. In terms of seriousness of the misconduct, it did not impact upon patient care and did not benefit the doctor in any way and when confronted with her behaviour, she admitted her lie.

Ms Cavender submitted that although this case slightly differs to yours, the correct principles were applied and the panel was deemed to be correct in assessing the question of whether or not the doctor's fitness to practice was currently impaired having regard to her conduct since the misconduct as well as the nature and extent of her misconduct, so her apology, insight and remediation were relevant to the assessment, which was the extremely low risk of recurrence.

Ms Cavender told the panel that regarding the O'Neill case which concerned a nurse giving a wrong drug during end-of-life care and then trying to cover up what she had done

and lying about it. In that case it was said that even in cases of dishonesty, a separate assessment of impairment is required and not every act of dishonesty will result in a finding of impairment. The judge in that case commented that the issue of impairment is inherently forward looking, and panels had to consider whether there was a risk of repetition.

Ms Cavender submitted that although these cases are admittedly unusual, they both involve dishonesty and they both confirm that not every act of dishonesty results in impairment as impairment is always forward looking. She further submitted that in applying those principles to this case, you are a nurse who, at the time of the incident in September 2015, had been on the register for six years and have practiced without blemish for eight years since then. You have taken remedial steps in obtaining certificates which have been provided in the documentation before the panel. You have completed a total of 22 courses, valid for a year from May 2023, so you are up to date with your training which includes basic life support training. You told the panel that at your own instigation, you completed an automatic external defibrillation course in May 2016 as a result of your failure to commence CPR on Patient A immediately.

Ms Cavender further submitted that these are very unusual circumstances but given that fitness to practise proceedings are not designed to punish practitioners but to look forward, it cannot be said that you are currently impaired. She also submitted that you have reflected upon your behaviour, you have provided excellent references from those who know you and work with you, and you are up to date with your training. Within the sentencing remarks, the judge stated that you have good victim empathy, and you are assessed as being someone with a low risk of reoffending.

The judge having heard all of the evidence also said that the genesis of the incident was a panic, knee jerk reaction in a stressful situation in the backlog of staff shortages. Ms Cavender invited the panel to look at this case in that context. She submitted that your lies and actions at Charge 2 were born out of the fear of threatened consequences and were terrible mistakes that you acknowledge. These have been remediated through training and

reflection. Ms Cavender submitted that the panel should find that your fitness to practise is not currently impaired.

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 and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision on factual disputes between you and Registrant B

The panel took into account your evidence and the version of events given by Registrant B in her evidence. The panel noted that you said you did commence CPR following the 999 call but Registrant B disputed this in her oral evidence. The panel noted that in both her police interviews, Registrant B stated that she had taken over CPR from you after the 999 call and you had taken it in turns to perform CPR on Patient A until the ambulance arrived. The panel was satisfied that you had performed CPR on Patient A, but this had not commenced until after the 999-call had been made.

On the basis of Registrant B's oral evidence which is consistent with what she said in her second police interview, the panel was satisfied that you did contact her on a number of occasions in order to persuade her to continue to lie for you. When asked during your oral evidence about this, you denied any contact had been made. The panel found that Registrant B had been consistent on this issue since the second police interview. It found her oral evidence on this issue convincing and preferred her version of events.

Decision and reasons on misconduct

When determining whether the facts found proved in Charge 2 amount to misconduct, the panel had regard to the terms of the Code.

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

'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.

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.1 pay special attention to promoting wellbeing, preventing ill health and meeting the changing health and care needs of people during all life stages

4 Act in the best interests of people at all times

8 Work cooperatively

To achieve this, you must:

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

13 Recognise and work within the limits of your competence

To achieve this, you must:

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

15 Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.1 only act in an emergency within the limits of your knowledge and competence

15.2 arrange, wherever possible, for emergency care to be accessed and provided promptly

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

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'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your failure to conduct CPR immediately on Patient A fell below the standards expected of a registered nurse in the circumstances.

The panel noted that when giving evidence, you stated that you checked for signs of life and believed you might have felt a pulse behind Patient A's ear. However, you did not try to initiate CPR at that point and as a Registered Nurse, the panel found this very concerning. The panel also found this to be at the higher end of the spectrum of seriousness. The panel noted however, the evidence that even if CPR had been administered before the 999 call it may not have saved Patient A's life. However, the fact that you did not attempt CPR upon finding Patient A is considered by the panel to be a very serious breach of your duty as a Registered Nurse.

The panel therefore found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

The panel was of the view that your lies, in telling the Trust, the police, the coroner, and ultimately a jury, that you had commenced CPR on Patient A prior to the 999 call, when you had not, breached parts of the Code. Specifically:

'4 Act in the best interests of people at all times

8 Work cooperatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

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

8.6 share information to identify and reduce risk

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

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

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other health and care setting and use the channels available to you in line with our guidance and your local working practices

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

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

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

23 Cooperate with all investigations and audits

To achieve this, you must:

23.1 cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise'

Nurses occupy a position of privilege and Trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to Trust nurses with their lives and the lives of their loved ones. To justify that Trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's Trust in the profession.

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

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

undermined if a finding of impairment were not made in the particular circumstances.'

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

The panel found that all four limbs of the test are engaged by reason of your misconduct and conviction. It determined that Patient A was put at risk of unwarranted physical harm as a result of you not performing CPR on him prior to calling 999. The panel determined that you did not act professionally and competently, or in the best interests of Patient A. The panel found that your conduct breached the fundamental tenets of the nursing profession and had brought its reputation into disrepute.

The panel was satisfied that confidence in the nursing profession would be seriously undermined if its regulator did not find charges relating to prolonged dishonesty, that led to a criminal conviction, to be very serious. In relation to your failure to initiate CPR before the 999 call and lying about this, the panel was of the view that if put under similar pressure or facing similar circumstances, there is a risk that this could be repeated. The panel noted that you lied from the date of the incident in September 2015, up until the date of your sentence in July 2020. The panel was of the view that you only told the truth as a result of being found guilty.

The panel considered the evidence provided by Registrant B during her second police interview on 25 February 2016 when she informed the police that she wanted to tell the truth. During this interview, Registrant B was very clear that she took over from you and continued the CPR that you had commenced on Patient A. In her oral evidence, Registrant B disputed this and seemed very confused. However, the panel considered that this interview set out the actual truth of what happened and formed the basis of the criminal court case. The panel concluded that you conducted CPR after the 999-call had been made and accepted your evidence that is supported by the version of events given by Registrant B in her second police interview on 25 February 2016. The panel did not find that Registrant B was lying during her oral evidence to get you into more difficulties but determined that her confusion was as a result of the passage of time.

On the issue of whether you put pressure on Registrant B to tell and maintain the lie that you had commenced CPR on Patient A immediately, the panel considered all the evidence before it. It noted that in her oral evidence, Registrant B said that you had asked her to lie initially and had then contacted her on a number of occasions. She said that you had contacted her on holiday, met her in Chiswick, London and phoned her on a number of occasions telling her not to change her story. When you were asked about this during your oral evidence, you totally refuted this and said you had never contacted Registrant B to discuss the matter. The panel took into account what Registrant B had told the police in her second police interview which was consistent with her oral evidence.

The panel also noted the comments made by the sentencing judge about you contacting Registrant B to continue to lie on your behalf on a number of occasions. The sentencing judge in the case of Registrant B also raised the issue and stated that you had persuaded her to mislead the authorities. The panel preferred the account of Registrant B on this issue.

The panel noted that you made no reference to this issue in your reflective piece, and you did not address how your actions affected Registrant B, who felt harassed into supporting your account. In fact, there is nothing of substance in your reflective piece that acknowledges how your lies and dishonesty may have affected your colleagues. The panel was concerned that given the Judge's sentencing remarks around how you negatively affected Registrant B you chose not to address the impact on her in your reflective account. This unresolved and non-acknowledged matter raises concerns about your insight and remorse.

In your reflective piece you stated:

> *"following my conviction, I accepted that this was a regulatory concern, and I therefore designed an action plan with a set of objectives to enable me to improve my deficit areas. To do this I had to go back to the NMC Code of Conduct that regulates my practice and looked at where I had breached the Code".*

You then identify Section 7 and 8 of the Code as areas for you to address. These deal with communication and working co-operatively. In respect of communication, you say that you accept that your communication and that of the team was not effective on the day the incident occurred. On working cooperatively, you say that the team failed to work cooperatively, and you accept the part you played in this failure and the consequences that followed. However, there is nothing in your reflective piece that demonstrates that either of these two areas have been addressed since your conviction. The action plan was not put before the panel.

You also state in your reflective piece that you are committed to immersing yourself in current best practices and dedicating extra effort to enhance your skills in dealing with similar incidents. The certificates included in your reflective bundle demonstrate that you have completed your mandatory training, however, there is no evidence before the panel to suggest that you have undertaken further training in life support beyond the expected minimum.

Regarding insight, the panel acknowledge that you have done some additional training and mandatory refresher training since your conviction. The panel was also provided with details of the courses you had done as part of your revalidation as a nurse. However, the panel was not sufficiently satisfied that you had done enough to demonstrate that you are not likely to repeat some of your past behaviour. In addition, the panel was not reassured that you have properly addressed the matters giving rise to the concerns despite the efforts you have made so far.

The panel acknowledged the positive testimonials that you provided. You helpfully provided the panel with a reference from the Agency that currently employs you in Muckamore Abbey Hospital. The person who provided the reference does not have the opportunity to observe staff directly in practice. However, he stated that you are a valuable asset to the service area you are deployed in, and that management have noted that you are an excellent nurse *"with whom they could not do without".* While this is helpful, a reference from your line manager setting out what progress you have made since commencing employment just before your sentencing would have been of more assistance. Furthermore, it could also have commented on your action plan referred to in your reflective piece. The panel acknowledges that on occasions it can be difficult for agency nurses to get references directly from the person they are working under.

The panel acknowledged your initiative in undertaking the Defibrillator course following the incident in 2015. You have included the course contents in your reflective piece. In your reflective piece you also state that you have taken proactive steps to enhance your

knowledge by enrolling in recurring basic life support training sessions. However, this is not supported by the training certificates you provided to the panel.

In its consideration of whether you have full insight and have significantly strengthened your practice, the panel considered your oral evidence when asked questions about your actions. You repeatedly said you were remorseful and apologised for your actions. Your oral testimony and written reflection demonstrated some early insight, but the panel is of the view that this is still developing, particularly as regards to the impact of your actions on Patient A's family, Registrant B, your colleagues, and the wider profession. There is some evidence of you attending relevant training courses. There have been no concerns reported about you whilst you have been practising unrestricted for the past seven and a half years. You told the panel that you are now proactive in making sure you can summon help, know where CPR kits are, and what the actual policy is on the unit where you are working. The panel was of the view that you acknowledged the incident and agreed your actions were wrong, however, you have sought to put the incident behind you without fully addressing how your actions affected others including your colleagues.

The panel is of the view that there is a risk of repetition and that if you find yourself in a similar situation where there is a risk to your reputation, losing your job, or being in front of the police or a court, you could behave as you did previously. The panel determined that although you have been working unrestricted without any concerns since 2015, a finding of impairment on public protection grounds is necessary as you have not yet demonstrated sufficient insight into your failure to commence CPR on Patient A immediately and why you lied about this. Although you have some insight as to why you did not perform CPR, you have not sufficiently addressed the issue of your anxiety, and if faced with a similar incident the panel could not be satisfied that such feelings of panic and anxiety would not reoccur. The panel therefore decided that a finding of current impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to

uphold/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, in this case, a finding of impairment on public interest grounds was required given your prolonged period of dishonesty. It determined that your dishonest conduct has brought the profession into disrepute.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 9 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Mr Skinner referred the panel to the NMC Guidance '*Factors to consider before deciding on sanctions*', particularly:

> a. *Being proportionate means finding a fair balance between the nurse, midwife or nursing associate's rights and our overarching objective of public protection. We need to choose a sanction that doesn't go further than we need to meet this objective. This reflects the idea of right-touch*

regulation, where the right amount of 'regulatory force' is applied to deal with the target risk, but no more.

b. *To be proportionate, and not go further than it needs to, the Committee should think about what action it needs to take to tackle the reasons why the nurse, midwife or nursing associate is not currently fit to practise.*

c. *They should consider whether the sanction with the least impact on the nurse, midwife or nursing associate's practise would be enough to achieve public protection, looking at the reasons why the nurse, midwife or nursing associate isn't currently fit to practise and any aggravating or mitigating features.*

d. *If this sanction isn't enough to achieve public protection, they should consider the next most serious sanction. When the Committee finds the sanction that is enough to achieve public protection, then it has gone far enough.*

Mr Skinner also reminded the panel that this guidance refers to aggravating and mitigating factors that need to be considered by panels when determining sanction. He submitted that the aggravating factors in this case are that:

- You have been convicted of a serious criminal offence. The offence you were convicted of involved lying to the police on more than one occasion.
- The offence you were convicted of involved serious interference with the administration of justice or with the investigation of offences.
- You put Patient A at risk of harm.
- You are said to have pressured and colluded with colleagues to also be dishonest and cover up your failings
- You provided limited insight, remediation, or remorse

Mr Skinner went on to submit that the mitigating factors in this case are that the incident occurred over six years ago, and no further clinical concerns have been raised against you since then. He informed the panel that the NMC's proposed sanction bid is a striking off order.

Mr Skinner submitted that in light of the above factors, a striking off order would be the most appropriate order. He submitted that to take no action or impose a caution order would not be appropriate in this case, and this is due to the seriousness of the facts proved and your misconduct.

Mr Skinner then submitted that when looking at a conditions of practice order, the NMC guidance states that the following factors should be considered:

a. *Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*
    i. *no evidence of harmful deep-seated personality or attitudinal problems*
    ii. *identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining*
    iii. *no evidence of general incompetence*
    iv. *potential and willingness to respond positively to retraining*
    v. *the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*
    vi. *patients will not be put in danger either directly or indirectly as a result of the conditions*
    vii. *the conditions will protect patients during the period they are in force*
    viii. *conditions can be created that can be monitored and assessed.*

Mr Skinner submitted that when looking at the first two factors, although there is an identifiable area of practice in relation to Charge 2, there were also attitudinal problems. These clearly relate to the consistent dishonesty and resulted in a criminal conviction. He submitted that these cannot be addressed through retraining.

Mr Skinner further submitted that the failings involve a serious departure from the standards expected of a Registered Nurse and they also put Patient A at potential risk of harm. There is an expectation that nurses act appropriately in emergency situations. It is a fundamental nursing skill that you attempt resuscitation to a patient in the circumstances such as you found Patient A. Further, the failings are likely to cause potential risk to patients in the future if they are not addressed.

Mr Skinner also submitted that the fact that there was a staff shortage that night does not explain why you left Patient A to go to the office and talk to a colleague and to call for the police. This raises further concerns about you and your actions. In addition, the panel are aware that you have been convicted of perverting the course of public justice. This goes to the heart of your attitudinal problems.

Mr Skinner reminded the panel that you are also alleged to have put pressure on colleagues to also lie to support your version of events. You colluded with them so that an untruthful account of what happened was given to the police. Mr Skinner submitted that an attitudinal issue such as this, clearly poses a risk to patients if it is not addressed. Further, you continued to deny the failings even after your conviction as per the sentencing remarks. This may suggest a harmful deep-seated personality or attitudinal problem. In light of this and the above reasons, the NMC submits that a conditions of practice order would not be appropriate in this case.

Mr Skinner submitted that the NMC has considered the guidance on suspension orders. He further submitted that the above concerns that applied to the issuing of a conditions of practice order are also applicable to any analysis of whether a suspension order is

appropriate. He submitted that the circumstances of this case and the charges against you, mean that the seriousness of the case requires your removal from the register.

Mr Skinner reminded the panel about what is stated in the NMC guidance in respect of striking off orders:

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

Mr Skinner submitted that the regulatory concerns about you do raise fundamental questions about your professionalism. This case involves concerns about your trustworthiness as a registered professional. Your conviction for perverting the course of public justice and its link to your practice very much raise these concerns.

Mr Skinner further submitted that the NMC Guidance on '*serious concerns which are more difficult to put right'*, lists the following as one of these concerns: "*breaching the professional duty of candour to be open and honest when things go wrong, including covering up, falsifying records*." He submitted that this reflects your actions which underpin your conviction. Further, that it is difficult to imagine a more serious, fundamental breach of the duty of candour than lying to the police. This also supports the submission that retraining cannot put this right.

Mr Skinner also submitted that restrictive action to promote public confidence or professional standards is only necessary when a nurse, midwife or nursing associate's past conduct raises fundamental concerns about their Trustworthiness as a registered professional. Given the nature and seriousness of dishonesty in this case as set out above, he submitted that a striking off order is appropriate.

Mr Skinner further referred the panel to the NMC guidance on '*striking-off orders'*, particularly where it sets out that: *"This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional".* He further submitted that your actions in this case are fundamentally incompatible with being a registered professional and public confidence in the nursing profession would not be maintained if you are not removed from the register.

Mr Skinner also noted the NMC guidance on '*Can the concern be addressed.*' He reminded the panel that this states that conduct which undermines public confidence in the profession and where there is an underlying attitudinal problem, may not be able to be addressed. For example, criminal convictions leading to custodial sentences, dishonesty particularly if serious, sustained and linked to your practice and neglect of patients. He submitted that all of these are features of your conviction.

Mr Skinner reminded the panel that it determined that your fitness to practise is currently impaired on both public protection and public interest grounds. He submitted that therefore, the panel may agree with the submission that a striking off order is the only sanction sufficient to protect the public, patients, and uphold professional standards. He further submitted that the seriousness of your failings is perhaps best reflected by the resulting sentence of the criminal courts of imprisonment, albeit suspended.

The panel also bore in mind Ms Cavender's submissions. [PRIVATE].

Ms Cavender told the panel that you have moved to Northern Ireland as this is cheaper for you [PRIVATE]. Following health concerns, you moved to Northern Ireland in an attempt to start afresh, but you maintain a good relationship with all of your children who visit frequently.

Ms Cavender submitted that given the above, it is conceded that realistically a caution order is not appropriate given the findings of the panel and the level of seriousness which

the panel understandably sets for finding impairment. She submitted however, that a conditions of practice order is not to be totally ruled out.

Ms Cavender noted the panel's concerns about the ongoing life support training and reminded it that, at your own instigation, you carried out defibrillator training in the months after this incident. She referred the panel to further training certificates that were received since the hearing started and reminded the panel that life support training is included in your annual training from the agency, and you have provided a certificate in relation to this.

Ms Cavender submitted that although a conditions of practice order may be unusual in circumstances such as this, it is important to note that you have been practicing for eight years, completely unrestricted, with no further clinical concerns being raised. She reminded the panel that you have received positive testimonials attesting to this and referred the panel to one reference from a Mental Health Nurse colleague who stated that they have had regular discussions at work with you regarding the incident. Further, they have observed you working on an action plan to identify any training you need, and you have been working tirelessly to improve on your failings and to uphold public confidence and the reputation of the nursing profession.

Ms Cavender also referred the panel to another positive testimonial from the Clinical Director for Direct Healthcare, who stated that you have taken the opportunity to complete multiple training sessions with both himself, and the clinical training team, and that during these sessions you have shown true passion for your nursing career. Further, the Clinical Director went on to state that he has had periodic meetings with the area service managers across the region in Northern Ireland to ensure quality standards are met and they have no concerns in relation to your nursing skills, your interprofessional relationships with the multidisciplinary team or with service users. Ms Cavender reminded the panel that there has been anecdotal feedback noted from Direct Healthcare that you are *"a valuable asset to the service"* and *"an excellent nurse with whom they could not do without."*

Ms Cavender referred the panel to another reference which stated that during the period of your reflection, you have proved to be a professional individual who is honest, trustworthy, and conscientious, has learned from his mistakes and has reflected on what went wrong by participating in clinical supervision. She reminded the panel that it also heard your oral evidence that you have learnt from your mistakes, and now make sure that you know where the CPR equipment is kept.

Ms Cavender also reminded the panel that you have taken specific steps to ensure that if put in similar circumstances again, you would not make the same mistakes, and this is confirmed in your reflective piece. Further, that you acknowledge that what you did was wrong, that dishonesty has very serious consequences, and you state specifically in your reflective piece that you acknowledge that your behaviour may have diminished public trust in the nursing profession. You also state in your reflective piece that you deeply regret the impact your actions may have had on the public's perception of the nursing profession and that you feel you let down Patient A's family, members of the public and ask with the deepest humility for forgiveness.

Ms Cavender submitted that although the panel were concerned about your understanding of the consequences of your actions both upon your colleagues and the reputation of the wider profession, it is clear that nursing is very much a calling for you, and it has been your vocation for nearly 15 years. She added that you have been working without incident for nearly eight years since this incident occurred which clearly shows that you have really reflected on the need for better communication between you and your colleagues. She referred the panel to your reflective piece where you state regarding the failures in your leadership, that you need to rebuild trust both with Patient A's family and with colleagues and you understand that this will require sincere efforts, open communication, and a demonstrated commitment to learning from this experience. You also mentioned that it is crucial to address these issues with empathy and sensitivity, acknowledging the gravity of the situation and the need for personal growth and professional development.

Ms Cavender further reminded the panel that you went on to make a detailed list in your reflective piece of how you would do things differently were you to be in similar circumstances in the future.

Ms Cavender submitted that a conditions of practice order may be appropriate and reminded the panel of the considerations it needs to make when determining whether such an order can be imposed. Firstly, will imposing conditions be sufficient to protect patients and the public; and that conditions may be appropriate where there is no evidence of a harmful deep-seated personality or attitudinal problem. She submitted that given the positive references and comments made about you and your practice from other colleagues, there is no evidence of harmful, deep-seated personality or attitudinal problems. You understand what you did was wrong, you have thought about it very deeply, and have taken steps to ensure it is never repeated.

Ms Cavender reminded the panel of the second key consideration when looking at conditions of practice orders, "*are there identifiable areas of the nurse's practice that need to be assessed and/or further retraining that has already been done?*" She submitted that you have completed quite a substantial amount of retraining but are happy to do more should the panel consider it necessary. She also submitted that there is absolutely no evidence of general incompetence and regarding the potential or willingness to respond positively to retraining, you have already started along this path and will happily continue.

Ms Cavender submitted that insight into health problems do not apply in this case and patients would not be put in danger if your practice was subject to conditions. Further, the fact that you have been working without restriction for almost eight years can attest to that. She also submitted that conditions would protect patients during the period they are in force, and you would be required to retrain if it was deemed necessary. Ms Cavender submitted that it is possible to formulate conditions that can be monitored and assessed as you practice.

Ms Cavender submitted that should the panel decide that a conditions of practice order would not be sufficient to uphold public confidence, it may move on to the question of suspension. She reminded the panel of the factors where this sanction may be appropriate. Firstly, where there has been a single act of misconduct (dishonesty in this case). She accepts that this went on for a lengthy period of time but as far as Charge 2 was concerned and your practice on the night, this was indeed a single instance of misconduct, and the dishonesty was a single lie as to what happened in a very brief period of time.

Ms Cavender submitted that the panel should take into consideration that the lie was maintained for a considerable length of time. However, it may consider that as far as Charge 2 is concerned, it was a single act of misconduct and that would not necessarily result in an outcome which warranted striking off.

Ms Cavender further reminded the panel of the next question to consider in respect of suspension orders and that is whether the misconduct is fundamentally incompatible with you remaining on the register. She submitted that given your demonstrated remorse, the way in which you have sought to improve your practice, and your remediation, as previously outlined, it is not fundamentally incompatible with remaining on the register. She submitted that you could continue to be a Registered Nurse, particularly in light of your unblemished conduct both prior to and since this incident. She submitted that there has been no evidence of harmful deep-seated personality or attitudinal problems and the references provided demonstrate that there has been no repetition of the behaviour since the incident occurred.

Ms Cavender submitted that given the insight you have demonstrated in your reflective piece, what you have been through in the past few years regarding the court hearing and now these proceedings, there is no risk of you repeating this behaviour. You have also assured the panel that you will never repeat the lies that you had initially told to the police and the court.

Ms Cavender further submitted that a suspension order would be an appropriate sanction if the panel considered that conditions of practice would not be sufficient, as the panel need to balance the seriousness of your impairment and the need to uphold public confidence against, what will be in September, eight years of your good practice since the incident. She further submitted that this is a very strong point in mitigating the question of sanction, which the panel needs to consider.

Ms Cavender reminded the panel that the impact the court proceedings and you having to appear before this panel have been very severe [PRIVATE]. You have moved a considerable distance, [PRIVATE] and have really worked extremely hard in the past few years to remediate your practice. She submitted that the panel have your assurance that this behaviour will never be repeated, and you ask for the minimum sanction commensurate with the factors outlined above, bearing in mind your exemplary performance as a nurse in the past eight years.

Decision and reasons on sanction

The panel accepted the advice of the legal assessor.

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating factors:

- The seriousness of the charges – you failed to perform CPR on a vulnerable patient who urgently required it

- Interference with the administration of justice due to your prolonged dishonesty to the Trust, the police, and the court
- The pressure you put on Registrant B to lie to the Trust and to the police
- Limited insight into your failings

The panel also took into account the following mitigating features:

- The incident occurred almost eight years ago
- No previous or subsequent regulatory concerns
- You have demonstrated some level of remorse and insight, although this is still developing
- You encountered an emergency situation, had not received a handover, and the unit was short staffed
- Provided evidence of some relevant training
- Positive testimonials from colleagues including the Director of Clinical Care

The panel first considered whether to take no action but concluded that this would be inappropriate due to the finding of impairment on both public protection and public interest grounds. The charges are very serious and your dishonesty over a prolonged period of time requires a sanction that is proportionate to your failings and your conviction of perverting the course of public justice. Further, taking no further action would not satisfy the public interest.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified above, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct is serious and that a caution order would be inappropriate in view of the issues

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

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that given your limited insight, there are currently no practical or workable conditions that could be formulated to address the attitudinal issue of protracted dishonesty identified in this case.

Furthermore, the panel concluded that the placing of conditions on your registration would not currently satisfy the public interest in this case.

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

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

The panel was satisfied that in this case, the misconduct and conviction were not fundamentally incompatible with you remaining on the register.

The panel then went on to consider whether a striking off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, it concluded that this would be disproportionate. Whilst the panel acknowledges that a suspension order may have a punitive effect, it would be unduly punitive in your case to impose a striking off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction to mark the public interest and public protection issues in this case.

The panel noted the hardship such an order will inevitably cause you. However, this is outweighed by the public interest in this case.

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

In making this decision, the panel carefully considered the submissions of Mr Skinner in relation to the sanction that the NMC was seeking in this case. However, the panel took

into account that you have been practising without any further clinical concerns since the incident occurred. Further, the panel was of the view that an informed member of the public who had access to all the information before the panel, including the testimonials, training certificates, your developing insight, and your engagement with the proceedings, may consider that you now understand that what you did wrong. They may also consider that you understand you need to make further improvement and undertake further training. The panel also noted that you have had no clinical concerns since the incident.

The panel noted the reference from the Director of Clinical Care and determined that such positive comments would not have been made regarding your practice if you were not considered to be a good nurse.

The panel was also of the view that it would be in the public interest for a nurse who has been able to demonstrate some insight into their failings and work towards making further improvements and has been practising for almost eight years since the failings occurred with no other concerns, to remain on the register.

The panel determined that a striking off order would be disproportionate because a suspension order is sufficient to mark the seriousness of the misconduct and give you an opportunity to demonstrate full insight building on what you have developed so far.

The panel determined that a suspension order for a period of 9 months was appropriate in this case to mark the seriousness of the misconduct and give you sufficient time to develop full insight and strengthen your practice.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may allow the order to lapse upon expiry, it may extend the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Undertaking training in Ethics/Probity and providing the necessary certificate(s)
- Undertaking any additional critical thinking courses related to decision making as a nurse
- Attendance on an up-to-date CPR course in a face-to-face setting
- Up to date testimonials from your employer should you be in any paid or unpaid employment
- Detailed reflections to include:
    - the impact of your failure to act and your subsequent prolonged dishonesty upon Patient A and his family
    - how your actions in applying pressure to Registrant B, to tell and maintain the lie on your behalf impacted on her and your colleagues
    - how your failings have brought the nursing profession into disrepute and undermined public confidence in the profession.

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Skinner. He submitted that an interim order should be imposed as the sanction does not come into effect straight away given that you have 28 days to appeal. The sanction will only come into effect after this appeal period has passed and if you do appeal, the sanction will not come into effect until after the appeal has been concluded.

Mr Skinner submitted that an interim suspension order of 18 months should be imposed in order to cover any appeal period for the substantive order, should you choose to make one. He submitted that 18 months should cover any potential appeal period given the backlog of cases and the fact that the length of time the appeal will take to be heard is unknown.

The panel also took into account the submissions of Ms Cavender who submitted that an interim order should not be more than the period of the suspension order, which is 9 months, and to impose one for longer than this is going to send out conflicting and confusing signals as far as you are concerned. She further submitted that whilst she understands the need for an interim order to protect the position if an appeal is launched, it does not need to be longer than the suspension order itself.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to cover any potential appeal period.

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

That concludes this determination.