

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

**Substantive Meeting
Tuesday, 6 June 2023 – Wednesday, 7 June 2023**

Virtual Hearing

Name of Registrant:	Alina Luiza Ionita	
NMC PIN	14J0017C	
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing (1 October 2014)	
Relevant Location:	Derry/Londonderry and Bournemouth	
Type of case:	Misconduct/Conviction	
Panel members:	Konrad Chrzanowski	(Chair, Lay member)
	Helen Chrystal	(Registrant member)
	Jocelyn Griffith	(Lay member)
Legal Assessor:	Graeme Sampson	
Hearings Coordinator:	Dilay Bekteshi	
Facts proved:	Charges 1, 2, 3, 4, 5	
Facts not proved:	None	
Fitness to practise:	Impaired	
Sanction:	Striking-off order	
Interim order:	Interim suspension order (18 months)	

Decision and reasons on service of Notice of Meeting

The panel was informed at the start of this meeting that that the Notice of Meeting had been sent to Ms Ionita's registered email address by secure email on 2 May 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, date and the fact that this meeting was going to be heard virtually on and after 6 June 2023.

In the light of all of the information available, the panel was satisfied that Ms Ionita has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Details of charge

That you, a Registered Nurse:

1. You were convicted on 22nd April 2021 at Londonderry Magistrates' Court of unlawful assault, contrary to the Offences Against the Person Act 1861.

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

2. You failed to disclose the NMC investigation against you to your employer, the Royal Bournemouth Hospital, between 14th September 2020 or before – 19th October 2020.
3. You failed to disclose to your employer, the Royal Bournemouth Hospital, that you had a Fitness to Practice Interim Order Review Hearing on 26th October 2020.
4. Your conduct in Charge 2, above, was dishonest in that you knew you should disclose the NMC investigation to your employer but sought to conceal that information from them.
5. Your conduct in Charge 3, above, was dishonest in that you knew you should disclose the interim conditions of practice order to your employer but sought to conceal that information from them.

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

Background

Ms Ionita first entered onto the Nursing and Midwifery Council (NMC) on 1 October 2014 as a Registered Nurse, specialising in adult care.

On 14 September 2020, the NMC received a referral from Owenmore Care Centre (the Home), part of East Eden Ltd. A further referral was received by the Police Service Northern Ireland (the PSNI) on 15 October 2020.

On 19 July 2020 after 06:30, it is alleged that two colleagues at the Home attended to Resident A who was distressed and suffered from dementia. Ms Ionita attended at about 06:40. She argued with Resident A, pointed a finger in her face and slapped her hand away when she raised it. The incident was reported to safeguarding and the PSNI.

Ms Ionita was suspended and resigned on 20 July 2020. She had already planned to relocate to Dorset.

In November 2020, Dorset Police interviewed Ms Ionita about the incident. Ms Ionita denied any wrongdoing.

On 22 April 2021, Ms Ionita was convicted by Londonderry Magistrates' Court for assault. She was fined £500 plus an offender levy of £15.

The NMC received a third referral from University Hospitals Dorset NHS Foundation Trust (the Trust) on an unclear date.

Ms Ionita began clinical work as a staff nurse at Royal Bournemouth Hospital on 14 September 2020. In her application she declared a previous referral to the NMC and the five-year caution imposed in 2017. The fact that Ms Ionita declared this caution to the Trust demonstrates that she knew of her obligation to report disciplinary matters yet failed to do so when she did not declare the referral to the NMC for the alleged incident on 19 July 2020.

As the five-year caution order was imposed on 2 November 2017, the current misconduct has been committed in the duration of that order.

On 20 September 2020, Ms Ionita was contacted by the NMC to inform her that it was investigating a referral. On 8 October 2020, a panel of the NMC's Investigating Committee held a hearing regarding Ms Ionita's case. The Trust became aware of the case through an unconnected safeguarding investigation.

Ms Ionita advised the Trust of the referral and hearing on 19 October 2020. On 4 November 2020, the Trust suspended Ms Ionita. Following an investigation and a hearing, Ms Ionita was dismissed from the Trust on 3 March 2021.

Decision and reasons on facts

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the NMC.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel had regard to the written statement of the following witness on behalf of the NMC:

- Witness 1: Matron for Older Peoples Services
with the Royal Bournemouth Hospital

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC.

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

Charge 1

The charge concerns Ms Ionita's conviction and, having been provided with a copy of the certificate of conviction dated 6 May 2021, the panel finds that the facts are found proved in accordance with Rule 31 (2) and (3). These state:

- '31.—** (2) *Where a registrant has been convicted of a criminal offence—*
- (a) *a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and*
 - (b) *the findings of fact upon which the conviction is based shall be admissible as proof of those facts.*
- (3) *The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.'*

The panel therefore found charge 1 proved by way of the certificate of conviction.

Charge 2

2. You failed to disclose the NMC investigation against you to your employer, the Royal Bournemouth Hospital, between 14th September 2020 or before – 19th October 2020.

This charge is found proved.

Ms Ionita informed the investigation interview held on 11 December 2020 (but not signed until 29 January 2021) by the Trust (Exhibit MR/1) that she was informed by the NMC on 20 September 2020 that she was under investigation. The following evidence was recorded in that document:

“[Witness 1] Can you confirm the date that you had been informed you were under investigation by the NMC?

[Ms Ionita] I think it was the 20th September.

[Witness 1] Have you got evidence of that please?

[Ms Ionita] I’ve been sent an email through Egress because they are sending everything to Egress now, you’re just notified that you have an email through Egress and you have to access Egress to access the actual document, the actual letter, and I had big problems with accessing Egress as I have the app on my phone, I downloaded it, I have it on my laptop as well and It wouldn’t...well the password that they gave me wouldn’t work, well they didn’t give me a password at the first. [sic]”

Although Ms Ionita was unable to open the document on 30 September 2020 a telephone call taken by a NMC case coordinator records: *“T/C to registrant to chase for response to my email requesting PCED. She confirmed she had received and looked at my emails and apologised for not responding...She said she has a permanent full-time job working at Royal Bournemouth Hospital and gave me her line managers name [Ms L] but no contact details – she asked if she can speak with her manager first who should be in tomorrow and ask for her direct number/email address (I got the impression she had possibly not mentioned the referral to us to her new manager/employer).*

She mentioned that she is quite upset about this situation as she would never cause harm to a patient and has never done anything like what she is accused of in her 15 years of being a nurse. She said that at the time of the incident there were 4 people in the room and that she could hear the screams of the patient from another unit that she was working in which is why she came over. She stated that she knew the patient quite well and how to talk to her but the patient was very distressed and scared that morning. She said that she wanted to make a complaint and refer the 2 care assistants present as they acted aggressively in forcing the patient to get dressed.

She stated that the allegations against her are untrue and she was never asked for her side of the story and was suspended that morning. She said that the Police called her last week after 2 months to speak to her about the incident and she said she has nothing to hide. She asked if she can send a statement to us with her version of events and I said she is welcome to send anything like that to my email account.”

The panel also took into account the telephone log on 5 October 2020, which states: “T/C to registrant...to try and give her password but the phone just rang for a while and then the call was ended with no option to leave a voice message.” The panel also noted that on 7 October 2020, the NMC received an email from Ms Ionita stating that she has been trying to access the secure email attached with documents relating to her hearing on 8 October 2020 but had no success. The panel was satisfied that Ms Ionita was aware of the NMC investigation against her from around 20 September 2020 as evidenced by the telephone and email communications with the NMC case coordinator.

Accordingly charge 2 is found proved.

Charge 3

3. You failed to disclose to your employer, the Royal Bournemouth Hospital, that you had a Fitness to Practice Interim Order Review Hearing on 26th October 2020.

This charge is found proved.

In reaching this decision, the panel took into account the internal interview dated 29 January 2021, which states:

“[Mr R] did you participate in the following hearing on 26th in any way, shape or form?”

[Ms Ionita] Yes I attended that hearing...

...

[Witness 1] so on the 26th of October your interim review hearing took place, you didn't disclose that to your currently employer, but you did after the hearing, the next day on the 27th.

[Ms Ionita] No I think I was off on that Monday and then [Ms A] changed the roster and put me on and I told her that I needed the day off for the NMC.

...

[Ms L]...I think you said to [Ms A] that whatever we wanted you to do you weren't able to facilitate but you didn't disclose at that point to [Ms A] that it was because you had an NMC hearing...

[Ms Ionita] I am pretty sure that I told that's in relation to the NMC.

[Witness 1] We can clarify that from [Ms A], because when I asked you earlier how were you..did you disclose this to your employer you said no, about the 26th October, so now you're saying you did tell [Ms A]?

[Ms Ionita] I remember telling her that I need that initially I was off, see everything is so muddled...

[Witness 1]...my conversations with [Ms A], regarding that date, my verbal conversation with her and the information she provided me was that she did not know it was an NMC hearing as to why you needed that day off.”

The panel further noted in that it was recorded in that internal interview that Ms L (Ms Lonita's manager at the time) and Ms A (roster manager at the time) were both clear that at no time had Ms Lonita advised the Trust of the Fitness to Practice hearing on 26 October 2020. The Trust said it only became aware of Ms Lonita's NMC case through an unconnected safeguarding investigation.

The panel also took into account the email sent from the NMC case coordinator to Ms Lonita on 20 October 2020 to advise that an Interim Conditions of Practice Order (ICOPO) was imposed at hearing on 8 October and new hearing was scheduled on 26 October. The email dated 20 October 2020 states the following: *"When the Panel considered our application for an Interim Order on Friday 8 October 2020, they indicated that a review hearing should be scheduled as soon as possible after that date. They also imposed a conditions of practice on you at that time. The review hearing has been scheduled for 26 October 2020 at 9am. As you had not had an opportunity to access and review the documents prior to the original hearing, it is imperative that you access them now, in advance of the review hearing."*

The panel saw documentary evidence that Ms Lonita has engaged with the NMC following receiving the letter and therefore the panel was in no doubt that she was aware that she was being investigated. The panel noted that although Ms Lonita may not have been able to access the documents until late October 2020, at that point she was aware that there were conditions imposed and that a review hearing was scheduled to take place.

The panel determined that Ms Lonita knew it was an expectation to disclose any investigation made against her to her employer, as she had previously disclosed in an interview with the Trust that she had a five-year caution order. The fact that Ms Lonita declared the caution order demonstrates that she knew of her obligation to report disciplinary matters.

Accordingly, the panel determined that, on the balance of probabilities, Ms Lonita did not disclose to her employer that she had a Fitness to Practice hearing on 26 October 2020. The panel therefore finds charge 3 proved.

Charges 4 and 5

4. Your conduct in Charge 2, above, was dishonest in that you knew you should disclose the NMC investigation to your employer but sought to conceal that information from them.

- 5 Your conduct in Charge 3, above, was dishonest in that you knew you should disclose the interim conditions of practice order to your employer but sought to conceal that information from them.

This charge is found proved.

The panel has applied the test for dishonesty set out in paragraph 74 of the Judgement in *Ivey v Genting Casinos UK Limited (Trading as Crockfords)* [2017] UK SC67. It considered firstly what was Ms Lonita's state of knowledge or belief as to the facts. Having established this, the panel went on to consider whether her conduct was dishonest applying the objective standards of ordinary decent people. It had regard to the documentary evidence and before making a decision on dishonesty, it considered whether there were other possible explanations for Ms Lonita's conduct and if so, whether it could safely conclude that those other explanations were less probable than dishonesty.

The panel found that on the balance of probabilities Ms Lonita knowingly withheld the relevant information about the NMC investigation and the ICOPO imposed against her registration. Ms Lonita understood the importance of immediate disclosure to her employer as she had done so previously disclosing her five-year caution order imposed in 2017. The panel found that Ms Lonita knowingly withheld this information regarding the NMC investigation and the ICOPO and that it was more likely than not to have been prompted by her desire to conceal that information from her employer.

In respect of charge 5) the panel took into account that honesty is the bedrock of the nursing profession. Every conditions of practice order contains the standard clause: "You must immediately inform the following parties that you are subject to a conditions of practice order..." Any application for a nursing post should contain all the relevant information relating to a nurse's practice, particularly any practice restrictions.

The panel determined that a well-informed member of the public and a fellow professional would be distressed that a registered nurse failed to disclose the NMC investigation and the ICOPO to her employer. It determined that ordinary decent people would regard Ms Ionita's conduct as dishonest.

The panel decided that Ms Ionita deliberately chose to conceal that information from the Trust and thus her actions were dishonest. The panel therefore found charges 4 and 5 proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts in charges 2, 3, 4 and 5 found proved amount to misconduct and, if so, whether Ms Ionita's fitness to practise is currently impaired by reason of her misconduct and conviction (charge 1). There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

Representations on misconduct and impairment

The panel had regard to the case of *Roylance v GMC (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.’

The panel took into account the NMC’s written representations on misconduct and impairment, which states:

“17.Charge 1 indicates that Ms Ionita’s fitness to practise is impaired by reason of conviction.

18.Charges 2 - 5 indicate that Ms Ionita’s fitness to practise is impaired by reason of misconduct.

19.The comments of Lord Clyde in Roylance v General Medical Council [1999] UKPC 16 may provide some assistance when seeking to define 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’.

20.As may the comments of Jackson J in Calheam 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 doctor’s (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 a fellow practitioner'.

21. Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per Roylance) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct ("the Code"). It is submitted that the following provisions of the Code have been breached in this case:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

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

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

23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body

22. The concerns raised are serious and fall far below the standards expected of a registered professional. The Code imposes a clear duty on nurses, midwives and nursing associates to abide by laws of the country in which they practice.

23. The overriding objective of the NMC is the protection of the public. The Trust has a similar duty to ensure that its employees are safe to practise. Ms Ionita failed to inform the Trust of her NMC referral which undermines their respective abilities to protect the public. This is because the Trust will have been deprived of the opportunity to assess fully Ms Ionita's alleged conduct at the material time and take any precautionary action(s) that might have been deemed necessary.

24. Acting with honesty and integrity at all times is a fundamental principle of the nursing profession. Dishonest conduct can raise questions about the trustworthiness of a nurse, as a professional. The charges above fall short of what would have been expected of a registered professional

Impairment

25. Impairment needs to be considered as at today's date, i.e. whether Ms Ionita's fitness to practice is currently impaired. The NMC defines impairment as a registered professional's suitability to remain on the register without restriction.

26. The questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:

1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or

2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or

3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or

4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.

27. The panel may also find it useful to consider the comments of Cox J in Grant at paragraph 101:

“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”.

28. It is the submission of the NMC that all four limbs can be answered in the affirmative in this case. Dealing with each one in turn:

29. Whilst no apparent physical or mental harm was caused to the resident, if Ms Ionita’s behaviour is not addressed then this poses an ongoing risk to vulnerable patients who rely on those that care for them to do so with kindness and compassion. Additionally, Ms Ionita failed to disclose the NMC investigation against her and the interim order conditions to her employer which puts the public at risk of harm. It is imperative that nurses are safe to practice, employers must be made aware of a NMC investigation and interim order conditions in order to ensure that the nurse is safe to practice. Failure to disclose this information placed the public at risk of harm. This failure to disclose raises questions about Ms Ionita’s trustworthiness and would undermine public confidence in the profession.

30. Ms Ionita has clearly brought the profession into disrepute by the very nature of the conduct displayed. Registered professionals occupy a position of trust and must act and promote integrity at all times, which have been breached in this case. Unlawful assault of a vulnerable resident is a serious breach of professional standards.

31. *The public has the right to expect high standards of registered professionals. The seriousness of the conviction are such that it calls into question Ms Ionita's professionalism and trustworthiness in the workplace. This therefore has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.*

32. *Ms Ionita was dishonest in that she knew the NMC was investigating the referral and failed to inform her employer.*

33. *Impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. 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) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

34. *The NMC's guidance says there are a small number of concerns that are so serious that it may be less easy for the nurse to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening. These include "dishonesty, particularly if it was serious and sustained over a period of time..."*

35. *Even if capable of remediation, Ms Ionita has failed to provide evidence that the regulatory concerns have in fact been remedied. We take this view because Ms Ionita has not provided any reflections to demonstrate insight, which indicates that patients in Ms Ionita's care remain at risk of harm.*

36. *The requirements of the Interim Conditions of Practice that were in place included training and development in the care of those with dementia. However Ms Ionita has not demonstrated that she has strengthened her practice in this area.*

37. *The NMC consider there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour. The public expect nurses to act with honesty and integrity so that*

patients and their family members can trust registered professionals. Ms Ionita's actions and convictions undermine public confidence in the nursing profession.

38. To the extent that Ms Ionita's failure to inform the Trust or the NMC about her conviction prevented the Trust from carrying out a timely risk assessment, the panel is invited to consider that a finding of impairment is required to protect the public.

39. As a 5 year caution order was imposed against Ms Ionita on 2 November 2017, the current conduct has been committed in the duration of that order. Ms Ionita will have been aware of this fact and it is possible that this was the cause of her concealment of the NMC investigation."

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015) ("the Code").

The panel was of the view that Ms Ionita's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Ionita's actions amounted to a breach of the Code. Specifically:

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

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

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

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body

The panel has taken into account that not every act falling short of what would be proper in the circumstances, and not every breach of the Code (2015), would be sufficiently serious that it could properly be described as misconduct. However, acts of dishonesty clearly breach the fundamental tenets of honesty, integrity and openness expected of a registered nurse. In addition, Ms Lonita's behaviour demonstrated clear failures in her duty to uphold the reputation of her profession at all times.

In all the circumstances, the panel was satisfied that the facts found proved in charges 2, 3, 4 and 5 were sufficiently serious to constitute misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct and conviction, Ms Ionita's fitness to practise is currently impaired.

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

Misconduct

The panel finds that Ms Lonita failed to notify her employer of the NMC investigation and restrictions on her practice and therefore placed patients at risk of harm. It noted that Ms Lonita's failure to inform the Trust about the NMC investigation prevented the Trust from carrying out a timely risk assessment. It also noted that ICOPO was imposed by the NMC in order to protect the public by applying a degree of oversight to Ms Lonita in her practice. The panel also found that Ms Lonita's misconduct had breached fundamental tenets of the nursing profession namely honesty and integrity and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be significantly undermined if its regulator did not find charges relating to dishonesty serious.

The panel having decided that all four limbs in the Shipman test are engaged, it considered whether there would be any repetition. In this regard, the panel asked itself three questions. First, whether Ms Lonita's conduct is easily remediable; second, whether she has remedied her misconduct; third, whether she is highly unlikely to repeat her misconduct.

The panel decided that Ms Lonita's conduct indicated deep seated attitudinal issues and that her actions are not easily remediable as she repeated her behaviour over a period of time. The panel then had regard to the fact that Ms Lonita has not provided any evidence of remorse, strengthening of her practice or insight into her failings. In these circumstances the panel decided that there is a risk of repetition. The panel therefore determined that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is also required because members of the public would be concerned that a nurse who had deceived her employer would be allowed to practice unrestricted.

Having regard to all the above, the panel was satisfied that Ms Ionita's fitness to practise is currently impaired by reason of her misconduct.

Conviction

The panel considered that Ms Ionita's actions by unlawfully assaulting a vulnerable resident brought the reputation of the nursing profession into disrepute. This would impact on the trust and confidence placed in nurses by patients, their families and members of the public. The panel considered that such a significant breach of trust by Ms Ionita also breached fundamental tenets of the profession:

- 17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

- 17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

In light of the lack of any evidence of insight, remorse and strengthened practice, the panel considered that a risk of repetition remains. The panel determined that the seriousness of the conviction is such that it calls into question Ms Ionita's professionalism and trustworthiness in the workplace. It therefore considered that Ms Ionita does remain liable to act in a way which could put the public at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. The panel

therefore determined that a finding of impairment as a result of her conviction is also necessary on the grounds of public protection and public interest.

Having regard to all the above, the panel was satisfied that Ms Ionita's fitness to practise is currently impaired by reason of her conviction.

Sanction

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

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

Representations on sanction

The panel took into account the NMC written representations in respect of sanction, which states:

“40. The NMC Sanctions Guidance on criminal convictions and cautions (FTP-2c) states:-

“If the criminal offending took place in the nurse, midwife or nursing associate’s private life, and there’s no clear risk to patients or members of the public, then it is unlikely that we’ll need to take regulatory action to uphold confidence in nurses, midwives or nursing associates, or professional standards. We’d only need to do that if the nurse, midwife or nursing associate was given a custodial sentence (this includes suspended sentences), or the conviction was for a specified offence.”

41. The NMC consider the appropriate and proportionate sanction in this case to be a striking-off order.

42. With regard to our sanctions guidance the following aspects have led the NMC to this conclusion:

43. The aggravating factors in this case include:

- Vulnerable resident*
- No insight shown*

- Dishonesty
- Conviction
- Offences committed in the duration of a Caution Order

44. There are no mitigating factors in this case.

45. Taking no action or a caution order - The NMC's guidance (SAN-3a and SAN-2b) states that it will be rare to take no action where there is a finding of current impairment and this is not one of those rare cases. The seriousness of the offences means that taking no action would not be appropriate. A caution order would also not be appropriate as this would not be in the public interest nor mark the seriousness and would be insufficient to maintain high standards within the profession or the trust the public place in the profession.

46. Conditions of Practice Order - The NMC's guidance (SAN-3c) states that a conditions of practice order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- no evidence of harmful deep-seated personality or attitudinal problems
- identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and/or retraining
- no evidence of general incompetence
- potential and willingness to respond positively to retraining
- 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
- 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
- conditions can be created that can be monitored and assessed.

26. The offences listed in the charges, and the facts behind those offences, do indicate harmful deep-seated personality or attitudinal problems. There are no areas of clinical concern which might more readily be addressed by way of training

or assessment. There are no practical conditions that could be put in place that would maintain public confidence.

27. Suspension Order - According to the NMC guidance (SAN-3d), a suspension order would not be appropriate in this case as the misconduct is fundamentally incompatible with the registrant continuing to be a registered professional. The overarching objective of public protection would not be satisfied by a suspension order and it would not be in the public interest to impose a suspension order in this case. The confidence in the NMC as a regulator would be undermined if the registrant was allowed to practice once the suspension order comes to an end.

47. Striking-off Order - The offence committed by Ms Ionita is fundamentally incompatible with being a registered professional and so are the actions of Ms Ionita which followed the offence. This sanction is the only proportionate and appropriate sanction to meet the NMC's overarching objective as a regulator and ensuring the public's confidence is maintained."

Decision and reasons on sanction

Having found Ms Lonita's 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:

- Ms Lonita's lack of insight, remorse or strengthened practice
- Ms Lonita's pattern of misconduct and dishonesty
- Ms Lonita's conviction which involved a vulnerable resident
- Offences committed in the duration of a five-year caution order

The panel could not identify any mitigating factors.

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 Lonita's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel decided that Ms Lonita's misconduct and conviction was not at the lower end of the spectrum and that a caution order would be insufficient to protect the public.

The panel next considered whether to impose a conditions of practice order. The panel had regard to the fact that the misconduct in this case did not involve Ms Ionita's clinical practice, and primarily concerned dishonest behaviour. Ms Ionita had not been engaging with the NMC's proceedings, and therefore there was no information to suggest that she would be willing to comply with conditions. The panel was therefore of the view that it was not possible to formulate practicable and workable conditions which would address the particular failings in this case. Furthermore, having regard to the seriousness of Ms Ionita's misconduct and conviction, the panel determined that a conditions of practice order would not satisfy the public interest.

The panel then considered a suspension order. It has found that there is evidence of a harmful, deep seated attitudinal problem. Ms Ionita abused her position of trust, whilst deliberately concealing the NMC investigation and the ICOPO from her employer. Therefore, the panel determined that Ms Ionita's dishonesty was at the upper end of the scale of seriousness. Furthermore, there was no evidence before the panel to indicate that Ms Ionita has any insight into her misconduct nor that she does not pose a significant risk of repeating similar dishonest behaviour. Furthermore, the panel has found that Ms Ionita's misconduct and conviction is fundamentally incompatible with her remaining on the register.

The panel therefore determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

When considering a striking-off order, the panel had in mind 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 Ionita's misconduct and conviction was a significant departure from the standards expected of a registered nurse. It was clear to the panel that her serious breach of fundamental tenets of the profession is incompatible with her remaining on the register. The panel was of the view that the Ms Ionita's actions were serious and that to allow her to remain on the register 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, the panel determined 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 Ionita's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this sanction would be sufficient in this case.

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

Interim order

As the striking-off order cannot take effect until the end of the twenty-eight 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 Lonita's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Representations on interim order

The panel took account of the NMC's written representations in respect of an interim order, which states:

"If a finding is made that Ms Lonita's fitness to practise is impaired on a public protection and/or public interest basis and a restrictive sanction imposed we consider an 18 month interim suspension order should be imposed on the basis that it is necessary for the protection of the public and otherwise in the public interest."

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 eighteen months.

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

That concludes this determination.

This will be confirmed to Ms Ionita in writing.