

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

**Substantive Hearing
Monday 6 November – Friday 10 November 2023**

Virtual Hearing

Name of Registrant:	Agnieszka Wroblewska
NMC PIN	14K0348C
Part(s) of the register:	RN1: Registered Nurse – Adult 13 November 2014
Relevant Location:	Warrington
Type of case:	Misconduct
Panel members:	Deborah Jones (Chair, Lay member) Pauline Esson (Registrant member) David Boyd (Lay member)
Legal Assessor:	Caroline Hartley
Hearings Coordinator:	Sharmilla Nanan (6 - 9 November 2023) Renee Melton-Klein (10 November 2023)
Nursing and Midwifery Council:	Represented by Rebecca Butler, Case Presenter
Miss Wroblewska:	Present and represented by Christopher Pix of Counsel, on behalf of the Royal College of Nursing (RCN)
Facts proved by admission:	All charges
Fitness to practise:	Impaired
Sanction:	Suspension order (6 months)
Interim order:	Interim Suspension Order (18 Months)

Details of charge

That you, a registered nurse:

- 1) On 22 May 2020 refused to refer Patient A, who had a deteriorating wound, to a Tissue Viability Nurse.
- 2) Between 22 May 2020 and 3 June 2020 did not follow the treatment plan prescribed for Patient A, by a Tissue Viability Nurse.
- 3) On 25 May 2020, without clinical justification, changed the treatment plan prescribed by a Tissue Viability Nurse for Patient A, and recorded a different treatment plan for Patient A.
- 4) Between 13 July 2020 and 20 July 2020 failed to adhere to the Covid-19 infection control measures, in that you allowed family visits in respect of Patient B to take place at the Home when they were prohibited.
- 5) On 20 November 2021 you inaccurately told Person A that you had not been subject to an NMC referral or investigation.
- 6) On 24 December 2021 you inaccurately told Person B that you were not aware of an NMC investigation into your fitness to practise.
- 7) Your conduct at charges 5 and /or 6 above was dishonest in that you intended to mislead your prospective employer about the status of your fitness to practise.

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

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Pix on your behalf, who informed the panel that you have previously made full admissions to charges 1, 2, 3 and 4. He told the panel that you have now also made full admissions to charges 5, 6 and 7.

The panel therefore finds charges 1, 2, 3, 4, 5, 6 and 7 proved in their entirety, by way of your admissions.

Background

The charges arose whilst you were employed as a registered nurse at Birch Court (the Home). On 6 May 2016, you began working at Moss House, a general nursing unit within the Home and you were promoted to the House Manager of this unit on 18 January 2019.

Charges 1, 2 and 3

On 10 March 2020, you completed training in administering topical medicines.

On 21 May 2020, a referral was made to the tissue viability nurse by Colleague 1, in relation to a sacral wound, for Patient A. A day later on 22 May 2020, a flash meeting was held and you reported that Patient A's wound had deteriorated from a Grade 2 wound to a Grade 4 wound. It was suggested by Colleague 2 that you make a referral to the tissue viability nurse, not realising that a referral had already been made by Colleague 1. You refused to make this referral. On the same day, the tissue viability nurse attended the Home and categorised the wound as 'unstageable' and prescribed flaminol hydro gel and a tegaderm foam dressing.

On 25 May 2020, you made a note in Patient A's wound care plan instructing nurses on the unit to use Medihoney instead of the flaminol hydro gel prescribed by the tissue viability nurse. Also, in Patient A's wound care plan, flaminol hydro gel was listed as the

primary dressing and you wrote next to it 'change to medihoney'. This was later crossed out by Colleague 2. The flaminol hydro gel arrived at the Home on 29 May 2020.

On 1 June 2020, the tissue viability nurse conducted a follow up visit with Patient A. She concluded that Patient A had a Category 4 wound.

On 3 June 2020, you met with Colleague 2 to discuss Patient A's wound. You confirmed that you had not consulted with the tissue viability nurse before changing the primary and secondary dressing on Patient A's notes. You stated that you were unaware that you needed to do so. You told Colleague 2 that you preferred a different medication which would be less adhesive and that flaminol hydro gel did not produce good results.

On 12 June 2020, the tissue viability nurse conducted a further visit to Patient A and revised the treatment plan for the wound by prescribing Aquacel Ag. Colleague 2 contacted the tissue viability nurse on 16 June 2020, and stated that Patient A's wound was infected. The tissue viability nurse recommended that the dressing be changed twice a day.

On 26 June 2020 you completed training in 'promoting healthy skin and wound care' and 'promoting healthy skin 1, 2 and 3'.

A disciplinary meeting was held in the Home in relation to this incident. You were issued a final written warning.

Charge 4

In July 2020 the Home was under "red lockdown", as per Public Health England guidance, because two patients had tested positive for COVID-19 within 14 days. This meant that visits to residents were not allowed, unless the resident was in the last few days of life. Such visits had to be approved by senior management. This had been discussed daily at the flash meetings and all staff were aware.

On 14 July 2020, you allowed Patient B's son into the Home to visit Patient B. Colleague 3 asked Patient B's son to leave, explaining about the "red lockdown" status. She questioned you about the incident and you told her that he had been "pushy". She told you that she understood the pressure from relatives but reminded you that only compassionate, end of life visits were permitted and these had to be approved by the House Managers of the Home. Patient B was not at end of life and would not have been allowed any visits.

On 18 and 19 July 2020, you allowed Patient B's daughter to visit Patient B in the Home.

A disciplinary hearing was held on the 12 August 2020 and you were dismissed. The Home referred you to the Nursing and Midwifery Council (NMC). On 20 August 2020, the NMC wrote to you confirming that they had received a referral relating to your fitness practise, to which you immediately responded.

Charges 5, 6 and 7

On 17 March 2021, you were informed by the NMC by email of your referral and that they were looking into the concerns regarding your fitness to practise.

On 20 November 2021, you attended a job interview at Cromwell Court and answered 'no' when asked if you had ever been subject to an NMC referral. On 24 December 2021, the NMC approached Cromwell Court for a reference regarding your work, you having provided the NMC with their details as your current employer. When the Home Manager at Cromwell Court telephoned you the same day, to ask about the NMC investigation, you told her that you were not aware of any such investigation.

Decision and reasons on an application for a short adjournment

The panel noted that due to Ms Butler's personal circumstances she was unable to attend Day 2 of the hearing.

Mr Pix referred the panel to your reflective statement in the NMC exhibit bundle which he submitted covers charges 1, 2, 3 and 4. He requested that the hearing be adjourned until Day 3 of the listing to provide you with time to produce a reflective statement for the remaining charges that you have admitted for the panel's consideration.

The panel took into consideration the reason for Mr Pix's application and determined to grant a short adjournment to allow you time to provide a further reflective piece.

Fitness to practise

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

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

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

Submissions on misconduct

Ms Butler provided the panel with written submissions on misconduct and impairment. She referred the panel to the relevant NMC guidance and submitted that your fitness to practise is currently impaired. She referred the panel to the judgment in the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), *R. (Remedy UK Ltd) v GMC* [2010] EWHC 1245 and *Nandi v GMC* [2004] EWHC 1245. She submitted that your dishonesty outlined in the charges is not amenable to remediation and that there is a high risk of repetition. She submitted that you committed numerous practise irregularities in relation to wound care and collaborative working in the best interests of the patient which you are liable to repeat in the future.

Ms Butler submitted that by acting outside the scope of your clinical practice and by deliberately misleading your employer regarding the NMC investigation you have brought the nursing profession into disrepute, and this would have a significant impact on the nursing profession as a whole.

Ms Butler invited the panel to take the view that the facts found proved amount to serious misconduct. Ms Butler referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision and she identified the specific, relevant standards where your actions amounted to misconduct.

Mr Pix referred the panel to the judgement in *R. (Remedy UK Ltd) v GMC* [2010] EWHC 1245 and *Nandi v GMC* [2004] EWHC 1245. He submitted that charges 1, 2 and 3, relate to a single patient and that these charges relate to clinical disagreement. He submitted that you have admitted these charges and reflected on these charges a very early stage. He submitted that the unwarranted risk of harm that Patient A was put in was minimal and was over a short period of time. He submitted in relation to charge 4, that this took place at a time when the whole country was facing a difficult situation in light of the COVID-19

pandemic. He submitted that you accepted this charge at an early stage and have demonstrated your understanding of the risk you potentially put the patient in.

Mr Pix reminded the panel that you have continued to practice as a nurse since these incidents and you have not since repeated this conduct. He referred the panel to your written reflections.

Mr Pix addressed the panel in relation to charges 5, 6 and 7. He noted that you have accepted these charges. He reminded the panel that this conduct dates back two years and there is no evidence that you have demonstrated any further dishonest conduct. He submitted that you have reflected on your dishonest conduct.

Ms Butler addressed the panel orally and submitted that you declined to reflect on your failings at the material time of the incidents which left your former colleagues with no other option but to make a referral to the NMC. She submitted that by not cooperating with the investigation, this demonstrated an attitudinal problem. She submitted that whilst the initial allegations related to clinical concerns, you later demonstrated actions which were serious by deliberately misleading the Home Manager at Cromwell Court.

Decision and reasons on misconduct

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

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

'8 *Work co-operatively*

To achieve this, you must:

- 8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*
- 8.2 *maintain effective communication with colleagues*
- 8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*
- 8.4 *work with colleagues to evaluate the quality of your work and that of the team*
- 8.5 *work with colleagues to preserve the safety of those receiving care*
- 8.6 *share information to identify and reduce risk*

9 *Share your skills, knowledge and experience for the benefit of people receiving care and your colleagues*

To achieve this, you must:

- 9.1 *provide honest, accurate and constructive feedback to colleagues*
- 9.2 *gather and reflect on feedback from a variety of sources, using it to improve your practice and performance*
- 9.3 *deal with differences of professional opinion with colleagues by discussion and informed debate, respecting their views and opinions and behaving in a professional way at all times*

13 *Recognise and work within the limits of your competence*

To achieve this, you must, as appropriate:

- 13.1 *accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care*
- 13.2 *make a timely referral to another practitioner when any action, care or treatment is required*
- 13.3 *ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*
- 13.5 *complete the necessary training before carrying out a new role*

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

- 18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*
- 18.2 *keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs*
- 18.3 *make sure that the care or treatment you advise on, prescribe, supply, dispense or administer for each person is compatible with any other care or treatment they are receiving, including (where possible) over-the-counter medicines*

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

To achieve this, you must:

- 19.1 *take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place*
- 19.3 *keep to and promote recommended practice in relation to controlling and preventing infection*
- 19.4 *take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1 *keep to and uphold the standards and values set out in the Code*
- 20.2 *act with honesty and integrity at all times...*

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel noted that in your reflective statement you stated that:

"I report wound to my line manager, TVN nurse already been informed day before by my colleague [sic] strongly believe that, during the meeting I was understand [sic] wrongly as I mean that 'give me a week and we will see what grade that wound is' not to give me a week to call TVN nurse to assess wound."

Further, it took into consideration that the medication prescribed by the tissue viability nurse did not arrive at the Home until 29 May 2020. The panel took into account that you attempted to do something rather than take no action at all in relation to Patient A's wound. The panel accepted that you are allowed to have a difference of opinion regarding the treatment plan for a patient. However, it concluded that it was not acceptable for you to implement your own treatment plan for Patient A without discussing it with the tissue viability nurse. The panel concluded that your actions underlying charges 1, 2 and 3 are serious enough to amount to misconduct.

The panel considered your conduct in relation to charge 4. It noted that whilst it was a difficult time for families and residents in care homes during the COVID-19 pandemic, the law at that time limited contact between families and residents. However, the panel bore in

mind that you allowed someone to enter the Home in breach of the relevant policy. It noted that the decision to allow patient's families to visit did not rest with you and that it was your responsibility to escalate these requests to your manager. The panel determined that you made this decision, on two occasions, when it was not your decision to make. The panel concluded that your actions in relation to charge 4 are serious enough to amount to misconduct.

The panel also found that charges which relate to dishonesty, namely charges 5, 6 and 7, where you had intentionally misled individuals by not disclosing that you were subject to a NMC investigation are serious enough to amount to misconduct. The panel noted that the evidence demonstrated that you had previously applied for a number of nursing roles where you had disclosed the NMC's investigation into your fitness to practice. You had been unsuccessful in obtaining any of those appointments.

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

Submissions on impairment

In Ms Butler's written submissions on impairment, she addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body.

Ms Butler submitted that the panel should consider the context of poor clinical practice and dishonesty including any personal factors you were subject to at the time, the environment at the care homes you worked in and any learning, insight and steps you have taken to strengthen your nursing practice. She submitted the panel should consider the seriousness of the charges admitted, especially in relation to the dishonesty charges. She submitted that dishonesty is incapable of being remedied. She referred the panel to the relevant NMC guidance. She invited the panel to make a finding of impairment.

Mr Pix submitted that it is a matter for the panel to consider whether you can practise safely, kindly and professionally. He referred the panel to the evidence that you have completed some training as outlined in the reference by Colleague 5. He also referred the panel to your reflective statement which he submitted demonstrates your insight.

You read a statement out to the panel regarding your employment history as a nurse, the significance of this regulatory process on you and what you have learnt from your failings.

The panel heard oral testimony, under affirmation, from Colleague 4 who was called on your behalf.

Mr Pix further addressed the panel on whether it is likely that the conduct will be repeated. He took you to relevant pages in the NMC exhibit bundle. He reminded the panel that you have not had any restrictions placed on your nursing practice by way of an interim order. He addressed the panel on the seriousness of the charges you have admitted and referred the panel to the relevant NMC guidance.

Ms Bulter addressed the panel orally. She submitted that there are no contextual factors which go to why the events admitted by you occurred. She submitted that there is no evidence of remediation or current practice, nor has there been any learning, insight or steps that you have taken to strengthen your practice. She submitted that a finding of impairment is necessary to uphold the professional standards of conduct and to maintain public confidence in the profession. She submitted the references before the panel do not offer any value in deciding impairment. She noted that whilst you have not been subject to an interim order you have not provided any information regarding the continuity of your employment. She submitted that the dishonesty conduct before this panel is not capable of being put right.

The panel accepted the advice of the legal assessor which included reference to relevant judgments.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"

If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must 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/ fitness to practise is impaired in the sense that S/He:

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

The panel determined that all four limbs of Dame Janet Smith's "test" were engaged.

The panel took into consideration that, whilst there was no known harm caused to patients, there was a risk of harm as a result of your misconduct. The panel finds that your misconduct has breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty serious.

Regarding insight, the panel considered your reflective statements and the oral statement that you made during the hearing. It noted that it did not have an opportunity to ask you

any questions. It noted that you are remorseful for your past failings regarding charges 1-3 and have stated that you would only work within the scope of your practise in future. It noted you said that you would raise any issues which you disagreed with in a patient's treatment plan. However, the panel took into account that you have not addressed why what you did was wrong, in letting patient's families in during the 'red' lockdown during the COVID-19 pandemic, and how this conduct impacts negatively on the reputation of the nursing profession. The panel concluded that you have developing insight.

The panel was satisfied that the clinical failings in this case are capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. It noted that whilst you completed some training when the clinical concerns were first raised at the Home, the panel did not have any evidence of this training or any training you have completed since this incident. The panel took into account that it did not have any evidence of steps you have taken to remediate the clinical concerns identified or any practical work experience you have done since. It noted that your CV did not list any details of employment undertaken since 2020.

The panel considered the oral testimony provided by Colleague 4 who is a registered nurse. It noted that you had previously worked with Colleague 4 at three different care homes. She is also a family friend. It noted that Colleague 4 did not provide any specific detail about your nursing practice or training, and it concluded that she did not say anything to convince the panel that you would not pose a risk to future patients under your care.

The panel also considered the revalidation form from Colleague 5, a Care Home Manager at Parklane Care Home and your line manager. The panel noted that it was not clear if you had worked with Colleague 5 in a permanent role or as an agency nurse. It noted that she had selected boxes to confirm she had seen evidence that you have worked the minimum number of hours required for your nursing registration, that you have completed 35 hours of CPD relevant to your nursing practice and she has seen evidence that you have

completed participatory learning relevant to your practice. She provided positive observations of your workplace practice. The panel noted that it did not have the benefit of seeing any of the evidence to which Colleague 5 referred.

The panel is of the view that there is a risk of repetition based on the lack of evidence of strengthened practise regarding your failings relating to your clinical practice. The panel was of the view that your clinical failings were also attitudinal in nature as you knew what steps should be taken but you decided to follow your own judgment. The panel noted you did this by changing the instructions on the wound care plan for Patient A and overriding the Home's policy in relation to admitting patient's families into the Home during the COVID-19 lockdown. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that a finding of impairment on public interest grounds is required as you had deliberately told your employer that you were not subject to an NMC investigation when you knew that you were. The panel noted that in your reflective statements you did not address this particular misconduct. The panel took into account that your dishonest conduct failed to promote professionalism, trust and honesty expected by members of the public.

Further, the panel was of the view that patients should be reassured that they can trust a nurse to follow the treatment plan provided for them and it took into account that your conduct as outlined in the charges undermined this position.

The panel therefore concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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

Sanction

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

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

The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Butler informed the panel that in the Notice of Hearing, dated 2 October 2023, the NMC had advised you that it would seek the imposition of a striking off order if the panel found your fitness to practise currently impaired.

Ms Butler submitted that the panel must consider the least restrictive sanction that would protect the public, though it was restricted due to the seriousness of the dishonesty in this case to either a suspension or striking off order. She submitted that the following aggravating factors should also be considered when determining sanction in this case:

- Lack of insight into failings

- Conduct which put patients at risk of suffering harm.

Ms Butler submitted that there was primary dishonesty in your telling your potential employers that there was not an NMC investigation against you, which she submitted could not be the case as the NMC had informed you via email of the investigation. Furthermore, she submitted that this dishonesty was compounded by you further denying to your employer that there was an NMC investigation against you, when challenged. She submitted that this was a deliberate attempt to deceive in order to get work.

Ms Butler submitted that your dishonesty also compounded the clinical concerns in that the manner you dealt with the wound management of Patient A and your disregard for Covid 19 advice to prevent infection in the Home, demonstrated further attitudinal concerns. She submitted that this disregard put the residents and staff at the Home at a high risk of harm.

Ms Butler invited the panel to take into account the case of *Dr Sawati v GMC* [2022] EWHC 283 (Admin) in regard to sanction in this case as she said that your defence of not knowing about the investigation against you was unreasonable and that you had positively denied it when challenged.

Ms Butler submitted that there was mitigation demonstrated by your insight and understanding of the problem and your attempts to address it, however, the panel have nothing further from you regarding your current work or references since March 2023. She submitted that whilst you should be given credit for your early admissions to charges 1-4, little or no credit was to be gained from your admissions at the start of the hearing to charges 5-7. She concluded by submitting that you were amply supported in the workplace and there was no personal mitigation that the panel should consider whilst determining the appropriate sanction.

The panel also bore in mind the submissions of Mr Pix who submitted that the three areas of concern in this case were the wound dressing, the Covid 19 charge, and dishonesty. He

dealt with each of the concerns in turn, but concluded at every stage that your remorse was genuine and was not a cover for regret. He invited the panel to review your reflection again whilst considering sanction and noted particularly the number of times you apologised and exactly what you have apologised for.

Mr Pix submitted that you have not repeatedly ignored authority and that you have acknowledged from a very early stage, particularly in regard to the Covid 19 allegations, that you handled things in the wrong way. He submitted that you are a humble nurse, who has made mistakes, but has reflected upon and considered them.

Mr Pix submitted that though you have continued to work as a registered nurse there have been no further instances of either dishonesty or clinical concerns, despite the fact that allegations go back more than two years.

Mr Pix submitted that the case of Dr Sawati v GMC was a case of fraud and that this is not applicable to the dishonesty which has been proved against you and submitted that your dishonesty was born out of a mistake. He submitted that not all dishonesty is considered equally serious and invited the panel to consider this whilst determining sanction.

Mr Pix submitted that you are a good nurse, that you have been a nurse all your working life and have two degrees in nursing. He submitted that all of your pleas should be given credit as the evidence was prepared months in advance and it is common for pleas to be made at any time prior to the beginning of the hearing.

Mr Pix concluded by submitting that given everything before it, the panel could be satisfied that a suspension order is a severe enough sanction in this case. He submitted that if you are suspended, you can use that period of time to continue to improve further, to continue to strengthen your practice and hopefully and ultimately return to nursing.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Conduct which put patients, colleagues, and the public at the risk of suffering harm.

The panel also took into account the following mitigating features:

- Admissions to all the charges
- Apologies and evidence of developing insight and some steps taken to address the concerns
- Previous good character

As dishonesty was engaged in this case, the panel first considered the NMC's Guidance for Cases Involving Dishonesty:

'Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*

- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

Dishonest conduct will generally be less serious in cases of:

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *incidents in private life of nurse, midwife or nursing associate'*

The panel did not find that any of the described instances of serious dishonesty were met in the admitted charges and concluded that the dishonesty found proved was opportunistic or spontaneous conduct. The panel accepted your account in your reflective piece that you did not seek to deceive and that you had notified previous agencies about the NMC's investigation. Further, it noted that you gave the information of your new employer to the NMC, which was not in keeping with any premeditated, systematic or longstanding deception.

The panel first considered whether to take no action but concluded that this would be inappropriate, as any proven allegations of dishonesty will always be serious. 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 your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of*

impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.' The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that though some aspects of the guidance above are applicable to the charges, due to the finding of dishonesty, conditions of practice are not a suitable sanction. Though some elements of the sanction guidance may apply to your clinical misconduct, the misconduct of dishonesty was not something that can be addressed through any particular conditions on your practice.

Accordingly, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case.

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

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

The panel was satisfied all of the sanction guidance above was applicable in your case. The panel did not find that there was any pattern of behaviour in your misconduct and accepted that the three concerns addressed in the charges to be unrelated to each other and each were single instances of the failing. It has been suggested that there have been attitudinal issues in the case, but the panel do not accept that these issues represent deep seated attitudinal concerns. The panel also noted the evidence before it of your developing insight and noted that in the more than two years that have passed since the allegations there has been no repetition of the behaviour.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Accordingly, the panel concluded that your misconduct was not fundamentally incompatible with remaining on the register. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

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

In making this decision, the panel carefully considered the submissions of Ms Butler in relation to the sanction that the NMC was seeking in this case. However, the panel considered that in carefully reviewing the sanction guidance and taking into account the insight you have already demonstrated, that you were not a registered nurse who should be removed from the register. The panel was of the view that a suspension will give you a suitable time frame to strengthen your practice and continue to deepen and demonstrate your insight into the concerns.

In accordance with this, the panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct and give you sufficient time to demonstrate your efforts to return to practice without restriction.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Your continued engagement
- Testimonials from your current employer and any volunteer or paid work you undertake during your suspension
- Evidence of targeted professional development, including documentary evidence of completion of any courses you undertake

- A further reflective piece which continues to explore the consequences of your admitted failings in relation to the overarching objectives of the NMC.

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 or is otherwise in the public interest until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Butler. She submitted that given the decision made by the panel to impose a substantive order for six months, it is necessary to impose an interim suspension order for 18 months to protect the public should you make an appeal in the next 28 days. As an appeal would prevent the substantive order from coming into effect this interim order would be necessary cover the amount of time it will take for the appeal to be dealt with, which can take as long as 18 months.

The panel also took into account the submissions of Mr Pix who submitted that if an order was necessary then it should not be for longer than the substantive 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, only insofar as if an appeal is made, sufficient time must be given to hear the appeal in court.

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.