

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

**Substantive Hearing
Tuesday 29 August-Monday 4 September 2023**

Virtual Hearing

Name of Registrant:	Kirsti Ward
NMC PIN	16D0375E
Part(s) of the register:	Registered Nurse – Adult Nursing (Level 1) (15 September 2016)
Relevant Location:	Hertfordshire
Type of case:	Conviction and Misconduct
Panel members:	Andrew Harvey (Chair, Lay Member) Sharon Peat (Registrant Member) Georgina Foster (Lay Member)
Legal Assessor:	Paul Hester
Hearings Coordinator:	Angela Nkansa-Dwamena
Nursing and Midwifery Council:	Represented by Hazel McGuinness, Case Presenter
Miss Ward:	Not present and not represented.
Facts proved by admission:	Charge 1
Facts proved:	Charges 2, 3a and 3b
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Ms McGuinness, on behalf of the Nursing and Midwifery Council (NMC), made an application for parts of this case to be held in private. The application was made in view of a retrospective disclosure of Miss Ward's email address and on the basis that proper exploration of Miss Ward's case involved references to her health and the health of Person A. Ms McGuinness submitted that the interests of the third parties outweigh the public interest and there is a need to protect their privacy and confidentiality in relation to health matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

In light of the retrospective disclosure of Miss Ward's email address and having heard that there would be references to Miss Ward's and Person A's health, the panel determined to hold parts of the hearing relating to these matters in private.

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Ward was not in attendance and that the Notice of Hearing letter had been sent to Miss Ward's email address by secure email on 24 July 2023.

Ms McGuinness drew the panel's attention to the fact that the Notice of Hearing had been sent to an alternate email address for Miss Ward, that was not held on the NMC register. The panel had regard to email correspondences from Miss Ward to the NMC dated 21 April 2023, and Ms McGuinness submitted that the email was received from the alternate email address.

Ms McGuinness submitted that the Notice of Hearing has been served in good time and the NMC has complied with the requirements of Rules 11 and 34 of the Rules.

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Miss Ward

The panel next considered whether it should proceed in the absence of Miss Ward. It had regard to Rule 21 and heard the submissions of Ms McGuinness who invited the panel to continue in the absence of Miss Ward. She submitted that Miss Ward had voluntarily absented herself from today's hearing.

Ms McGuinness referred the panel to Miss Ward's Case Management Form (CMF) completed on 21 April 2023, in which she indicated that she would not attend her substantive hearing. Ms McGuinness submitted that Miss Ward has not made an application for an adjournment and there was no reason to believe that an adjournment would secure her attendance on some future occasion.

Ms McGuinness referred to the case of the *General Medical Council v Adeogba* [2016] EWCA Civ 162 and reminded the panel that it should balance fairness to a registrant against fairness to the regulator and the interests of the public. Ms McGuinness submitted that although Miss Ward's absence means she is unable to give evidence on her own behalf or challenge evidence presented by the NMC, the panel has Miss Ward's CMF which contains her responses. Ms McGuinness

highlighted that in the CMF, Miss Ward indicated that in relation to Charge 1, she accepted the facts. The panel also had regard to the following statement in an email from Miss Ward to the NMC on 21 April 2023:

'To reiterate I will accept the decision of the NMC and I am not challenging anything...'

Ms McGuinness submitted that the panel has these responses from Miss Ward to consider and Miss Ward has requested that proceedings continue as it would [PRIVATE]. She further submitted that there is a witness due to give evidence and not proceeding in Miss Ward's absence may cause an inconvenience to the witness and since they are also a nurse, it may cause issues with their employer.

Ms McGuinness submitted that it is in the public interest for hearings to proceed in an expeditious manner and that it would be fair, appropriate and proportionate to proceed in Miss Ward's absence.

Before retiring to deliberate, the panel questioned Ms McGuinness regarding the information concerning Miss Ward's health which is contained within the CMF. The panel noted that in her correspondence to the NMC and in her CMF [PRIVATE]. The panel was concerned that [PRIVATE]. The panel acknowledged that the engagement Miss Ward had with the NMC occurred on one day only, 21 April 2023, when she had completed and returned her CMF. The panel carefully [PRIVATE], Miss Ward had previously indicated that she would not attend the hearing and she was not seeking an adjournment. The panel ventilated this with Ms McGuinness as to the possibility of a short adjournment during which the NMC could seek to make contact with Miss Ward by email and telephone. Ms McGuinness agreed that the circumstances of the information within the CMF that this would be a reasonable approach.

The panel accepted the advice of the legal assessor.

The panel decided in fairness and kindness to Miss Ward, to allow a brief adjournment to enable the NMC to sensitively make further contact with her. The

panel explained that Miss Ward was not being required to attend but was being afforded another opportunity to be present or confirm that her position had not changed.

The hearing resumed at 14:00 hours on Day 1. Ms McGuinness informed the panel that she had emailed Miss Ward and tried to reach her on her mobile phone on three occasions, with no response. The Hearings Coordinator also confirmed that she had sent Miss Ward another email with the meeting link attached and she had also not received any response from Miss Ward.

The panel decided to adjourn the hearing until 09:15 hours the next day to allow Miss Ward ample time to respond in case she did not have immediate access to her phone or her email account. If no response is received from Miss Ward by then, the panel would consider the application to proceed in her absence.

The hearing resumed at 09:18 hours on Day 2. Ms McGuinness informed the panel that she had sent Miss Ward another email the day before and tried to call her again before joining the hearing. Unfortunately, the number rang once then stated that it was unavailable. The Hearings Coordinator also told the panel that no response had been received in relation to the email she had sent. Ms McGuinness informed the panel that it appeared that Miss Ward's number has changed but she has not updated the NMC.

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

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'*.

The panel decided to proceed in the absence of Miss Ward. In reaching this decision, the panel considered the submissions of Ms McGuinness, the contents of Miss Ward's CMF and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R v Jones (Anthony William)*_(No.2) [2002]

UKHL 5 and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Miss Ward has been aware that this hearing would be taking place and has indicated in her CMF that she would not be attending;
- Miss Ward has informed the NMC that she has received the Notice of Hearing and confirmed that she would like the hearing to proceed in her absence and has expressed [PRIVATE];
- Miss Ward has not provided the NMC with details of how she may be contacted other than her registered email address and contact number;
- No application for an adjournment has been made by Miss Ward;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- A witness is scheduled to attend today to give live evidence and has already been previously delayed;
- Not proceeding may cause further inconvenience to the witness, their employer and the clients/patients who need their professional services;
- The charges relate to events that occurred in 2020 and further delay may have an adverse effect on the witness' ability to accurately recall events; and
- There is a strong public interest in the expeditious disposal of this case.

There is some disadvantage to Miss Ward in proceeding in her absence. Although the evidence upon which the NMC relies on has been sent to her email address. Miss Ward will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Ward's decisions

to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on application to amend the charges

Prior to closing the NMC's case, the panel heard an application from Ms McGuinness to amend the wording of Charges 2 and 3a.

The proposed amendments were to substitute the phrase 'were in a relationship' with the phrase 'had sexual intercourse'. It was submitted by Ms McGuinness that the proposed amendments were being made in line with the evidence provided by Witness 1 after panel questions and re-examination, to provide clarity and more accurately reflect the evidence.

Original Charges

That you, a registered nurse:

2. In May or June of 2020 requested Person A to tell police that you had not told them you were in a relationship with a prisoner.
3. Your request of Person A at 2 above was dishonest in that:
 - a. You knew you had told Person A you were in a relationship with a prisoner.

Proposed Amendments

That you, a registered nurse:

2. In May or June of 2020 requested Person A to tell police that you had not told them you **had sexual intercourse** ~~were in a relationship~~ with a prisoner.
3. Your request of Person A at 2 above was dishonest in that:
 - a. You knew you had told Person A you **had sexual intercourse** ~~were in a relationship~~ with a prisoner.

Ms McGuinness submitted that during the oral evidence, Witness 1 stated that Miss Ward had informed them that she'd had sexual intercourse with a prisoner as opposed to a relationship and that Witness 1 had told the police that the sexual intercourse related to a prisoner and not a prison officer. Ms McGuinness highlighted that Witness 1 had sought to clarify this distinction when questioned by the panel.

Ms McGuinness submitted that the change in wording did not alter the nature of the seriousness of the charges, but it simply fell in line with the evidence heard from Witness 1. Ms McGuinness referred the panel to the Judge's sentencing remarks on 8 July 2022, in which references were made to sexual intercourse.

Ms McGuinness reminded the panel that it should consider if there would be any injustice or prejudice to Miss Ward as she has not attended the hearing and cannot submit a response or make submissions in relation to the amendments. Ms McGuinness submitted that Miss Ward pleaded guilty to having sexual intercourse with a prisoner, which was outlined in the sentencing remarks and is the basis for Charge 1. Ms McGuinness further submitted that by amending the wording from 'were in a relationship' to 'had sexual intercourse' to fall in line with the evidence submitted by the NMC, there would be no unfairness to Miss Ward and the amendment can be made without any injustice to her.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel decided to reject the application to amend Charges 2 and 3a. The panel noted that the application appears to stem from the oral evidence of Witness 1, where they sought to make a distinction between a relationship and sexual intercourse. However, looking at Witness 1's evidence included within the two police statements, words such as 'affair', 'had sex' and 'relationship' appear to be interchangeable. In any event, the panel noted that in Charge 1, although a separate charge, provides context for Charges 2 and 3. The charge is described as a common law offence of misconduct in a public office and there are no particular details outlined in the conviction certificate. However, the panel had careful regard to the Judge's sentencing remarks, where it is plainly set out that the misconduct was Miss Ward having an intimate relationship with a prisoner by having a sexual encounter on more than one occasion. The panel is clear that the relationship described was in the context of a sexual relationship therefore, there is no reason to amend Charges 2 and 3a. In light of this, no prejudice towards Miss Ward can arise from this matter as no amendments have been made.

Details of charge

That you, a registered nurse, were convicted on 9 May 2022 of:

1. Holder of a public office wilfully neglected to perform duty/wilfully misconducted himself/herself between 29.12.2019 and 25.3.2020.

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

That you, a registered nurse:

2. In May or June of 2020 requested Person A to tell police that you had not told them you were in a relationship with a prisoner.
3. Your request of Person A at 2 above was dishonest in that:

- a. You knew you had told Person A you were in a relationship with a prisoner.
- b. You were seeking to mislead the police investigation into the offence at 1 above.

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

Background

The NMC received a referral from Bedfordshire Police (the Police) on 16 November 2020, raising concerns about Miss Ward.

The charges arose whilst Miss Ward was employed as a Band 6 Prison Nursing Sister by Hertfordshire Community NHS Trust (the Trust) at HMP Mount (the Prison) between 10 October 2016 and 30 September 2020.

Between 29 December 2019 and 25 March 2020, it is alleged that Miss Ward engaged in an inappropriate sexual relationship with a prisoner, whilst working as a nurse at the Prison.

Miss Ward resigned from the Prison with immediate effect before a disciplinary investigation could be conducted. Miss Ward resigned the day before the disciplinary meeting was due to take place.

Miss Ward was interviewed by the police on 5 June 2020, and denied the allegation of misconduct in a public office.

Miss Ward was interviewed again on 15 July 2020 on suspicion of perverting the course of justice. This arose from an allegation that she asked a friend (Person A) to provide false evidence to the police. Miss Ward had previously disclosed to Person A that she had been involved with a prisoner and prior to Person A's interview with

police on 9 July 2020, Miss Ward had gone through Person A's messages to establish a predetermined version of events.

On 9 May 2022, Miss Ward was convicted of wilful misconduct in judicial or public office.

On 8 July 2022, Miss Ward was sentenced to 14 months imprisonment, suspended for 12 months, with:

- An electronically monitored curfew for six months.
- A 200-hour unpaid work requirement
- 15 days rehabilitation activity requirement (RAR)
- Victim surcharge.

Decision and reasons on facts

In relation to Charge 1 which concerns Miss Ward's conviction, the panel heard from Ms McGuinness that Miss Ward had admitted to the charge in her CMF. The panel was also provided with a copy of the certificate of conviction certified by a competent officer of the Court, dated 4 October 2022. The panel noted that the certificate of conviction clearly states that Miss Ward pleaded guilty to and was convicted of holder of a public office wilfully neglected to perform duty/wilfully misconducted himself/herself between 29.12.2019 and 25.3.2020 on 9 May 2022. The panel also had sight of the transcript of the Judge's sentencing remarks dated 8 July 2022.

Accordingly, the panel therefore finds Charge 1 proved in its entirety, by way of Miss Ward's admission to Charge 1 and criminal conviction.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case, including Miss Ward's responses in the CMF, together with the submissions made by Ms McGuinness.

The panel has drawn no adverse inference from the non-attendance of Miss Ward.

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 heard live evidence from the following witness called on behalf of the NMC:

- Witness 1: Person A, a Registered Nurse and friend of Miss Ward at the time of the incident.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor, who referred it to the case of *Ivey v Genting Casinos* [2017] UKSC 67. It considered the witness and documentary evidence provided by the NMC.

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

Charge 2

That you, a registered nurse:

2. In May or June of 2020 requested Person A to tell police that you had not told them you were in a relationship with a prisoner.

This charge is found proved.

In reaching this decision, the panel considered the two written police statements from Witness 1, dated 9 July 2020 and 2 February 2021 and Witness 1's affirmed oral evidence.

The panel first considered whether or not Witness 1 had knowledge of Miss Ward's inappropriate sexual relationship with a prisoner.

The panel took account of Witness 1's first written statement to the Police, which stated the following:

'First of all I would like to say that I was not aware that she had sex with an actual prisoner until 25th March 2020.'

'On 25th March 2020, the day that [Miss Ward] was suspended from work at HMP The Mount she came over to my house and we drove in my car and sat talking in the car park at Verulamium Park in St Albans for about two hours. [Miss Ward] was very upset. She told me that she had been 'walked out' of work and what the allegation was. It was then that she disclosed to me for the first time that the man she had had sex with at the prison was actually a prisoner. She has never told me anything more about him.'

The panel noted that this was reiterated in Witness 1's second written police statement, in which they stated the following:

'On 25th March 2020, the day that [Miss Ward] was suspended from work and we met in Verulamium park...

We spoke for around 2 hours and then [Miss Ward] went home...'

The panel was satisfied that Witness 1 had come to the knowledge of Miss Ward's inappropriate sexual relationship with a prisoner during a meeting between them in a car whilst parked in a public car park on 25 March 2020.

The panel then went on to consider whether or not Miss Ward had asked Witness 1 to lie to the police that she had not told Witness 1 that she was in an inappropriate sexual relationship with a prisoner.

The panel considered the following from Witness 1's first police statement:

'Shortly after 29th May...

... Whilst she was in my garden we went through all the messages on my phone...

... [Miss Ward] then went through them and gave me her interpretation of what the messages meant so that I could tell the police the same as she planned to tell them. She asked me to lie for her. I wrote down her answers on a piece of paper and memorised them. [Miss Ward] has that piece of paper now.'

The panel also took into account this excerpt from Witness 1's second written statement:

'On 1st June 2020 I received a message from [Miss Ward]...

...She also said the messages I would be asked about were the ones "which you know they're about [REDACTED] and [REDACTED]". I took this as a reminder that I was to tell the police that the messages about the person she had slept with at the prison were about Prison Officers [REDACTED] and [REDACTED]...'

The panel further noted the following from Witness 1's second statement:

'We didn't meet up on 14th June however but met up instead on the afternoon of Saturday 20th June and this was one of several days that we practiced what I would tell the police.

...During the walk we practiced what I was going to say.

...[Miss Ward] would ask me a question based on the messages between us on my phone, and we would rehearse what I would say. The answers were written down on a piece of paper.'

In Witness 1's live oral evidence, two and a half years after providing the last statement, the panel noted that Witness 1 was able to recall the same events outlined in their statement. The panel noted that Witness 1's oral evidence confirmed that they had been asked by Miss Ward to lie to the police about her inappropriate sexual relationship with a prisoner, on several occasions, and was asked to state in their police interview, that this had occurred with prison officers as opposed to a prisoner.

The panel found that Witness 1 was open to stating if they did not know something or could not remember when questioned. The panel determined that there was no evidence before it to undermine Witness 1's police statements and oral evidence; indeed the panel took the view that they were entirely consistent.

The panel also had regard to the Judge's sentencing remarks which outlined that Miss Ward had sought to deny that she had had an inappropriate sexual relationship with a prisoner by asking her colleague to not disclose this information.

The panel was satisfied that based on the balance of probabilities, it is more likely than not that around May or June 2020, Miss Ward had asked Witness 1 to lie to the police about her relationship with a prisoner.

The panel carefully considered that Miss Ward indicated that she did not agree with Charge 2 in her CMF. However, in light of the substantial and cogent evidence, it decided this charge to be proved on the balance of probabilities.

Accordingly, this charge is found proved.

Charge 3a

3. Your request of Person A at 2 above was dishonest in that:

- a. You knew you had told Person A you were in a relationship with a prisoner.

This charge is found proved.

The panel first considered its previous findings with respect of Charge 2 and Witness 1's written statements and affirmed oral evidence.

Having established this, the panel went on to consider whether or not Miss Ward's actions in Charge 2 were dishonest. It had regard to the test set out in *Ivey v Genting Casinos* which outlines the following:

- What was the defendant's actual state of knowledge or belief as to the facts; and
- Was the conduct dishonest by the standards of ordinary decent people?

The panel also had regard to the NMC guidance entitled '*Making decisions on dishonesty charges*' (reference DMA-7) dated 12 October 2018. Within this guidance, Fitness to Practise Committee (FtPC) panels are advised to decide whether the conduct indeed took place and if so, what was the registrant's state of mind at the time. Panels are reminded to consider the following:

- *'What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.'*

In reviewing the evidence, the panel considered the evidence of Witness 1. It found that Miss Ward was aware that she had informed Witness 1 of her inappropriate

sexual relationship with a prisoner, and she knew she was being dishonest by asking/coaching Witness 1 to say otherwise to the police.

According to Witness 1, Miss Ward's conduct was designed to conceal the fact that she had engaged in an inappropriate sexual relationship with a prisoner. This is supported by Witness 1's account of Miss Ward asking them to tell the police that the sexual contact had occurred between her and a prison officer. The panel considered that Miss Ward's denial and deflection and her conduct and behaviour found proved in Charge 2 would be regarded as dishonest by the standards of ordinary decent people. The panel explored all alternative explanations that Miss Ward's course of action might have been innocent, but no such explanation was reasoned other than the fact that Miss Ward was wanting Witness 1 to provide false information to the police in their investigation. The panel was therefore satisfied that Miss Ward was dishonest in her actions.

In light of the above cogent evidence, the panel found Miss Ward's actions were dishonest according to the standards of ordinary decent people.

The panel therefore found Charge 3a proved on the balance of probabilities.

Charge 3b

- b. You were seeking to mislead the police investigation into the offence at 1 above.

This charge is found proved.

In reaching this decision, the panel again considered the written and oral evidence provided by Witness 1. The panel also took into account its previous finding of dishonesty with respect to Charge 3a.

The panel had regard to the following within Witness 1's first written statement:

‘[Miss Ward] convinced me that there would be no evidence as long as I stuck to what she wanted me to say.’

Witness 1 further upheld this during their oral evidence. Witness 1 stated that Miss Ward had informed them that the police would have no evidence against her if the allegations were not corroborated by Witness 1’s statement. The panel found that Miss Ward was aware that she was asking Witness 1 to provide false information and the sole purpose of her dishonesty was to deliberately mislead the police investigation.

The panel noted that Witness 1 and Miss Ward had known each other for a considerable period of time at the time of the allegations and were close friends. At the time Miss Ward informed Witness 1 of her inappropriate sexual relationship with a prisoner, Witness 1 appeared to have been under the impression that Miss Ward was neither joking, nor fabricating any of the events. The panel had no information before it to suggest that there had been any animosity between Witness 1 and Miss Ward prior to the police investigation therefore, there does not appear to be any motive for Witness 1 to concoct a false narrative of the events that took place.

In light of the cogent evidence, the panel was satisfied that based on the balance of probabilities, it is more likely than not that Miss Ward was seeking to mislead the police investigation into the offence at Charge 1.

Accordingly, this charge is found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Ward’s fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration of Charges 2, 3a and 3b as these charges are drafted in terms of misconduct whereas Charge 1 is drafted in terms of a conviction. In respect of Charges 2, 3a and 3b, the panel must first 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, Miss Ward's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms McGuinness provided the panel with written submissions with regards to misconduct, which stated:

‘...

*Misconduct has been defined in **Roylance v General Medical Council (No. 2) [2000] 1 AC 311**, as a “word of general effect, involving some act or omission which falls short of what would be proper in the circumstances”.*

...

*One of the sources of these standards for the nursing profession can be found in **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)**’ (the Code).*

The NMC submit Ms Ward's conduct did fall significantly short of the standards expected of a registered nurse when acted dishonestly when she requested [Witness 1] to tell the police that she had not told her that she was in a relationship with a prisoner when she knew she was,

asking her to lie for her on more than one occasion coaching [Witness 1] in relation to what she should say and when she sought to mislead the police investigation into the offence for which she has now plead guilty, the offence in charge 1.

The Panel should also consider whether Ms Ward's conduct did fall significantly short of the standard and amounted to multiple breaches of the Code. Specifically:

Promote professionalism and trust

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*

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

Breaches of the code do not automatically amount to a finding of misconduct however submit that the facts found proved are serious and consequently should be marked as such.

*The Panel should have regard to **R (on the application of Remedy UK Ltd) v General Medical Council** [2010] EWHC 1245 (Admin) who stated that misconduct must be 'sufficiently serious that it can properly be described as misconduct going to fitness to practise'.*

The NMC submit that the misconduct in this case is “sufficiently serious” that it can be properly described as misconduct both individually and cumulatively. In all the circumstances, it is submitted that the Panel should consider Registrant’s conduct falls far below the standards which would be considered acceptable and that the facts found proved amount to misconduct.’

Submissions on impairment

Ms McGuinness then went on to address impairment in her written submissions:

1. *‘Impairment is a matter for the panel’s judgment. There is no statutory definition of fitness to practise. There is no burden or standard of proof. The submissions of each side are simply submissions, and the Panel must come to its own, independent decision on this issue.*

2. *Article 22 of the Nursing & Midwifery Order 2001 provides for a finding of impairment of fitness to practise via one or more of 5 routes. The routes by which you are asked to find impairment today are in relation to charge 1 conviction and charges 2 and 3 misconduct.*

3. *In the 2009 case of **Cheatle v GMC**, Cranston J made clear that panels considering the question of impairment should engage in a two-step process: first, they should decide whether on the facts found proved, one or more of the 5 routes provided for has been established; only if they conclude that such a route has been established, should they go on to the second step and consider whether the registrant’s fitness to practise is impaired by reason of that route.*

- ...
12. *Should the panel consider that the facts admitted, and the charges found proven do amount misconduct, the panel should*

then consider whether the Registrant's fitness to practise is currently impaired, as of today.

- 13. Considering question of impairment, you must 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.*
- 14. There is no definition of "impairment" provided by the NMC's legislative framework.*
- 15. The NMC's guidance (DMA-1) explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:*
- 16. "Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
- 17. If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.*
- 18. Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*
- 19. A general approach to what might lead to a finding of impairment was given by Dame Janet Smith in her Fifth Shipman Report. A summary is set out in **Grant** at paragraph 76 in the following terms:*

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.*

20. In this case, it is submitted that limbs a, b, c and d are engaged.

Public Protection

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

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

48. The Order states:

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

- (a) to protect, promote and maintain the health, safety and well-being of the public;*
- (b) to promote and maintain public confidence in the professions regulated under this Order; and*

(c)to promote and maintain proper professional standards and conduct for members of those professions.

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

"It is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations ... namely, the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession"

50. The NMC submit that Ms Ward has acted in the past and/or is liable so as to put patients at unwarranted risk of harm. The NMC submit that Ms Ward's conviction and the behaviour which lead to her conviction and misconduct placed patients at unwarranted risk of harm.

51. Ms Ward was employed as a band 6 Nurse within the Prison and the prisoner she had a relationship was a patient. The panel will note at p5 of the Exhibit 2 bundle contained within the Judge's sentencing comments the Judge notes "You attempted to cover your tracks by making notes within the records to try to justify why your period alone with the patient was for as long as for the frequencies it was". In doing so, the Panel should consider that unwarranted risk of harm to patients in that she was taking time away from other patients in the prison but also that any other medical professional looking at the patient/prisoner's records could potentially be relying on incorrect information in the future for treatment.

52. The Panel should also have regard the potential for harm to the patient with whom Ms Ward was in the relationship. The NMC direct the Panel guidance at SAN-2 and the Professional Standards Authority guidance to CHRE guidance on clear sexual boundaries

between healthcare professionals and patients: responsibilities of health care professionals. The NMC submit that where professional boundaries are breach could impair the nurse's clinical judgement which could put patients at unwarranted risk of harm and also in these circumstances could be said that given the circumstances of prison setting abuse of power her role as a nurse and the patient was a prisoner.

53. Further as set out in the Judge's remarks he states "The impact upon other people who were employed at the prison is quite clear, that they felt they weren't able to speak to you, because of your particular salary grading, and they were junior as far as their position [sic] was concerned...". The Ms Ward's conduct also placed the patients at unwarranted risk of harm due to the potential of such behaviour to cause disruption of cohesion of the clinical team.

54. It is submitted that there is unwarranted risk of harm and a potential for serious harm.

55. The Panel should consider that 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 loved ones lives. When considering the risk of harm to patients, the Panel should consider the possible consequences of the concerns, such as members of the public feeling reluctant to access health and care services.

56. They must make sure that their conduct at all times justifies their patients' and public's trust in the profession.

57. If the public may not feel able to trust nurses, members of the public might take risks with their own health and wellbeing by avoiding treatment or care from nurses, midwives, or nursing associates.

Public Interest

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

58. Registered professionals occupy a position of trust in society to be responsible for the care of patients.

59. The NMC submit that such behaviour not only brought Ms Ward's reputation into disrepute, but also that of the wider profession. This in turn undermined the public's confidence in the profession as a whole.

60. The public, quite rightly, expect nurses to be honest and not engage in relationships with patients. The facts, as set out in the charges, brought the profession into disrepute and had the potential to undermine trust and confidence in the profession.

61. Ms Ward's conduct has brought the profession into disrepute. Confidence in the profession would be undermined if its regulator took no action.

Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession

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

- a) Prioritise people;*
- b) Practice effectively;*
- c) Preserve safety and*
- d) Promote professionalism and trust*

63. *It is submitted that the NMC have set out above, how, by identifying the relevant sections of the Code, Ms Ward has breached fundamental tenets of the profession. These sections of the Code define, in particular, the responsibility to promote professionalism and trust. Breaches of the Code, amount to a breach of the fundamental tenets of the profession.*

64. *The public, quite rightly, expect nurses to promote professionalism and trust. Ms Ward's actions, as set out in the charges, brought the profession into disrepute and had the potential to undermine trust and confidence in the profession.*

Has in the past acted dishonestly and/or is liable to act dishonestly in the future.

65. *Ms Ward acted dishonestly in that she knew that in her request as set out in charge 2 was dishonest in that she knew she had told [Witness 1] that she was in a relationship with a prisoner and that she was seeking to mislead the police investigation into the offence at charge 1 that she has been convicted.*

Remediation, reflection, training, insight and remorse.

66. *It is submitted that Silber J's guidance on remediation is also of assistance; that when deciding whether fitness to practise is impaired panels should take account of:*

- *Whether the conduct which led to the charge is easily remediable;*
- *Whether it has been remedied; and*
- *Whether it is likely to be repeated.*

67. *The first question is whether the concerns can be addressed. That is, are there steps that the nurse, midwife or nursing associate can take to address the identified problem in their practice?*

68. *It can often be very difficult, if not impossible, to put right the outcome of the clinical failing or behaviour, especially where it has resulted in harm to a patient. However, rather than focusing on whether the outcome can be put right, the Panel should assess the conduct that led to the outcome, and consider whether the conduct itself, and the risks it could pose, can be addressed by taking steps, such as completing training courses or supervised practice.*

69. *The NMC submit in this case the concerns are serious concerns and it could be said extremely difficult if not impossible to put right. The concerns fall into the category of conduct which falls so far short of the standards the public expect that public confidence could be undermined. The NMC submit that the Panel should consider guidance at FTP-13a:*

In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

- *criminal convictions that led to custodial sentences*
- *inappropriate personal or sexual relationships with patients, service users or other vulnerable people*

- *dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice*

70. The NMC submit that the behaviour which led to Ms Ward's conviction amounts to serious sexual misconduct and is particularly serious as she has abused a special position of trust she hold as a registered caring professional and undermines her trustworthiness as a registered professional.

71. Before effective steps can be taken to remedy the concerns, the nurse must recognise the problem that needs to be addressed, and particularly demonstrate sufficient insight.

*72. The judgment of Mrs Justice Cox in the case of **Grant**, it is submitted is also of assistance: "When considering whether or not fitness to practise is currently impaired, the level of insight shown by the practitioner is central to a proper determination of that issue."*

73. It is a matter for the Panel's own judgment on whether and to what extent the Registrant has demonstrated insight, and on what significance to attach in this case to the presence or lack of insight, to whatever degree you find it is demonstrated.

74. In reaching a decision on impairment, it is further submitted that it is essential that regard is had to paragraph 62 of Silber J's judgment in which he stated:

"Any approach to the issue of whether a doctor's fitness to practise should be regarded as 'impaired' must take account of 'the need to protect the individual patient, and the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour.'"

Insight

75. *The Panel are directed to the NMC guidance at FTP-13b where it states A nurse, midwife or nursing associate who shows insight will usually be able to: step back from the situation and look at it objectively, recognise what went wrong, accept their role and responsibilities and how they are relevant to what happened, appreciate what could and should have been done differently and understand how to act differently in the future to avoid similar problems happening.*
76. *The NMC submit that this is a case where Ms Ward has demonstrated very little insight. She did plead guilty at court however the Panel should note Judge's comments at that her plea of guilty came "late in the day..". She also admitted the facts in relation to charge 1 and does in the returned Case Management Form accept she is impaired.*
77. *She has not provided any reflective piece or evidence of further training. She has not provided an explanation for her conduct or explained why it happened or what she would do differently.*
78. *She does not acknowledge the damage to public confidence in the profession and it is submit that she does not fully grasp how far her practice fell short of professional standards.*
79. *Turning finally to remorse, there is no evidence of remorse.*
80. *The NMC submit that it cannot be said that is highly unlikely that the conduct will be repeated as she has shown little or no insight in relation criminal conviction or the behaviour which led to the criminal conviction and no evidence relating to charges 2 and 3 impact of her dishonesty on the nursing profession as a whole or the impact on her friend.*

81. *In all the circumstances, it is submitted that the conviction, the behaviour that led to her conviction and misconduct has not been remediated and a finding of current impairment needs to be proved in order to sufficiently protect the public, maintain the confidence in the NMC as a regulator and uphold the standard of the profession generally.*

Public interest

82. *In **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)** at **paragraph 74** Cox J commented that:*

83. *“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.”*

76. *In all the circumstances, it is submitted that the conviction and misconduct demonstrated by Ms Ward has not been remediated and a finding of current impairment needs to be proved in order to sufficiently protect the public, maintain the confidence in the NMC as a regulator and uphold the standard of the profession generally. The public interest calls for a finding of impairment to maintain trust and confidence in the profession and its regulator. A well-informed member of the public would be concerned to find that Ms Ward was not found to be impaired given the seriousness and nature of the charges.*

77. *Baring all factors in mind, it is my submission that the concerns have not been remediated and I would therefore ask you to find Ms Ward's fitness to practise currently impaired by reason of her conviction and*

misconduct.

78. *The NMC invite the Panel to find that Ms Ward is impaired on public protection and public interest grounds. ’*

Although the numbering above is not consecutive, it reflects that used in the written submissions which the panel received.

The panel accepted the advice of the legal assessor which included reference to a number of legal authorities. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *General Medical Council v Meadow* [2007] QB 462 (Admin), *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and *Cohen v GMC* [2015] EWHC 581 (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, midwives and nursing associates’* (2018) (the Code) in making its decision.

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

‘Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your professional at all times

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*

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 noted that Charge 1 is drafted in terms of Miss Ward's fitness to practise being impaired by reason of the conviction. The criminal conviction resulted in Miss Ward, a person of hitherto good character, receiving a suspended custodial sentence. The Judge's sentencing remarks reflect the serious nature and extent of Miss Ward's actions. The panel noted that whilst Charges 2, 3a and 3b are drafted in terms of Miss Ward's fitness to practise being impaired by reason of misconduct, the context of these charges are inextricably linked to Charge 1.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Miss Ward's behaviour was a serious departure from the standards expected of a registered nurse and amounted to serious misconduct. The panel considered that dishonesty is fundamentally incompatible with being a registered nurse. The panel decided that Miss Ward's proven actions both individually and collectively did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

The panel previously found that when Miss Ward asked Witness 1 to lie to the police, she was seeking to mislead the police investigation. The panel determined that this was a serious breach of trust and professional obligation, which amounts to serious misconduct.

The panel determined that Miss Ward demonstrated deep seated attitudinal issues. The panel was of the view that Miss Ward's dishonesty, combined with the undue pressure she placed on her colleague to also be dishonest, indicated that Miss Ward may be likely to repeat the same conduct if another serious situation presented itself. In addition to being a registered nurse, Miss Ward was a public office holder, therefore the standards she was required to uphold were even higher. Miss Ward had an additional responsibility to maintain safety and security in her work environment, the Prison, and her conduct in engaging in sexual activity with a prisoner seriously breached this. The facts of the conviction outlined in Charge 1 highlighted this as the conviction was based on the breach of these professional boundaries.

The panel concluded that both an informed member of the public and a fellow member of the nursing profession would find Miss Ward's behaviour to be deplorable and damaging to the public trust in nurses.

The panel noted that in engaging in a sexual relationship with a prisoner, Miss Ward was not practising effectively. The panel was of the view that Miss Ward was not carrying out her duties effectively when she was expected to be, and in doing so, she did not put patients first by neglecting her duties as a nurse during the sexual encounters. Her behaviour meant that she may not have been appropriately attending to other prisoners'/patients' clinical needs.

The panel found that Miss Ward's actions in the charges found proved did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Ward'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/ 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 limbs b, c and d are engaged in this case when looking at past conduct. The panel found that although it could be argued that the prisoner was in a vulnerable position and Miss Ward's breach of professional boundaries could have potentially put them at risk, no actual harm was caused and there is no evidence before the panel to suggest that patients were put at risk. However, the panel identified that Miss Ward had likely neglected her duties and placed her own needs over those of her patients, therefore putting them at risk of potential harm. The panel was of the view that Miss Ward had brought the reputation of the nursing profession into disrepute and her actions were considered so disreputable that they resulted in a criminal conviction. The panel found that Miss Ward's misconduct had breached the fundamental tenets of the nursing profession as there were numerous breaches of the Code. The panel acknowledged that members of the public would be horrified to learn of Miss Ward's conviction, her dishonesty, and her intent to influence another registrant to be dishonest to mislead a police investigation, as outlined in Charges 2, 3a and 3b. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator, the NMC, did not find charges relating to dishonesty extremely serious.

The panel was aware that this is a forward-looking exercise, and accordingly it went on to consider whether Miss Ward's misconduct was remediable and whether it had been remediated.

The panel had regard to the case of *Cohen* and considered whether the misconduct identified is capable of remediation. The panel had reservations about Miss Ward's attitudinal concerns. Not only had Miss Ward been dishonest herself, but she had also tried to influence another person to be dishonest to mislead a police investigation. The panel was of the view that this made the dishonesty even more significant. The panel determined that Miss Ward's misconduct was so serious that it could not be remediated.

Accordingly, the panel went on to consider whether Miss Ward remained liable to act in a way that would put patients at risk of harm, bring the profession into disrepute and breach fundamental tenets of the profession in the future. In doing so, the panel considered whether there was any evidence of insight and remediation.

Regarding insight, the panel considered that there was no evidence before it, such as a written reflective piece, to demonstrate Miss Ward's insight, any attempts of remediation or strengthened practice.

The panel had regard to the Judge's sentencing remarks:

'Two years have passed is what I'm being told. Well, yes, but you were charged with regard to this matter at the beginning of January, I think it was, of 2021, and then the delay thereafter is because you decided to fight it as opposed to saying, "Hands up. It's me". It would have been dealt with quite some time ago, and it may well have been that you- whatever prison sentence you would have received, you would have probably have completed by now. But that's on you, that's on nobody else really. The delay factor is you.'

'You have distanced yourselves [sic] from your stupid comments to the probation officer, with regards to denials. Well, I suspect it takes time to accept one's own wrongdoing...'

The panel considered that Miss Ward sought to deny her actions and did not plead guilty until shortly before the trial, which demonstrated that Miss Ward had an attitude of not wanting to accept responsibility for her actions or reflect on them or the impact of them on others and the impact upon the public's perception of the nursing profession.

The panel was of the view that there is a risk of repetition based on the fact that Miss Ward has not engaged with the NMC, other than her brief correspondence on 21 April 2023, and there have been no indications of her insight or any remediation. The panel took into account that Miss Ward has not acknowledged the seriousness of her offence. The panel was of the view that due to her lack of insight and recognition of the seriousness of her actions, there was a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and 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 as a member of the public and other members of the nursing profession would find Miss Ward's behaviour deplorable. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment was not made in this case and therefore also finds Miss Ward's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

In reaching this decision, the panel had regard to all the evidence that was 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 McGuinness reminded the panel that the overarching objective of the NMC is to protect the public and that the choice of sanction is a matter for the panel's independent and professional judgement. Ms McGuinness further submitted that it was the NMC's position that the most proportionate sanction in this case would be a striking off order.

Ms McGuinness submitted that as an experienced panel, the panel should exercise its own independent judgement on what sanction to impose and have regard to the NMC's published SG, bearing in mind that it provides guidance and not firm rules. She further submitted that the purpose of a sanction is not to be punitive but to protect the public and satisfy the public interest and the panel should take into account the principle of proportionality. Ms McGuinness submitted that the proposed sanction is proportionate and one that balances the risk to public protection and public interest with Miss Ward's interests.

Ms McGuinness went on to identify the following aggravating features in Miss Ward's case:

- Lack of insight;
- Attitudinal concerns;
- Dishonesty;
- A serious breach of trust; and

- A serious criminal conviction

Ms McGuinness submitted that a possible mitigating feature in Miss Ward's case is that she eventually admitted her guilt in the Criminal Court and she has also admitted to Charge 1 in relation to the NMC charges.

Ms McGuinness invited the panel to assess the available sanctions in ascending order considering the least restrictive first. Ms McGuinness submitted that the panel should consider whether no further action would be an appropriate sanction. Ms McGuinness submitted that NMC guidance (*reference SAN-3a*) states that it would be rare for a panel to take no further action where there is a finding of current impairment and that Miss Ward's case is not one of those rare cases. She submitted that the seriousness of Miss Ward's misconduct means taking no action would not be appropriate and in view of the panel's finding of Miss Ward's fitness to practise being impaired on both public protection and public interest grounds, and that there remains a risk of repetition and risk to the public, taking no further action would neither be appropriate, nor proportionate.

Ms McGuinness then went on to invite the panel to consider a caution order. She submitted that a caution order would not be appropriate or proportionate in this case as it would neither be in the public interest, nor would it mark the seriousness of the case. Furthermore, a caution order would be insufficient to maintain the trust and high standards of the nursing profession. Ms McGuinness further submitted that the NMC SG states that a caution order may be appropriate where the misconduct is at the lower end of the spectrum. She submitted that Miss Ward's case is not at the lower end of the spectrum and a caution order would not be appropriate in view of the seriousness of the case and the panel's finding of Miss Ward's fitness to practise being impaired on both public protection and public interest grounds. She finally stated that would not be an appropriate sanction given that there are identified risks to the public.

Moving on to a conditions of practice order, Ms McGuinness submitted that this type of order is typically imposed in cases where there are concerns that relate to clinical practice. She submitted that Miss Ward's conviction and the misconduct found

proved do not relate to her clinical practice therefore, it would not be appropriate or proportionate to sufficiently address the public interest. She submitted that it would not be possible to devise conditions which would be workable or measurable to satisfy the public interest and it would also not be appropriate in relation to protecting the public.

With regards to a suspension order, Ms McGuinness submitted that a suspension order would neither be appropriate, nor proportionate. She invited the panel to consider the SG which states that a suspension order may be appropriate in cases where the misconduct is not fundamentally incompatible with a registrant continuing to be a registered professional and if a panel is satisfied that another outcome other than a permanent removal from the register is appropriate. Ms McGuinness asked the panel to consider whether the seriousness of Miss Ward's case requires a temporary removal from the register, and if a period of suspension would be sufficient to protect patients, maintain public confidence in registrants and uphold professional standards. In relation to the first question, Ms McGuinness asked the panel to consider its finding that Miss Ward's behaviour, namely lying and seeking to mislead the police, amounted to serious misconduct. With regards to the second question, Ms McGuinness submitted that a period of suspension would not be sufficient to protect patients, maintain public confidence in registrants and uphold professional standards.

Ms McGuinness then moved onto a striking off order and submitted that this sanction is usually appropriate when a nurse's actions are found to be fundamentally incompatible with being a registered professional. Ms McGuinness submitted that a striking off order is both an appropriate and proportionate sanction in Miss Ward's case. Ms McGuinness highlighted that the fundamental concern in this case relates to Miss Ward's trustworthiness as a registered professional and submitted that her conduct is fundamentally incompatible with her continued registration. Ms McGuinness referred the panel to the SG, specifically *SAN-3e* and *FTP-3*. She submitted that in the past, the courts have supported decisions to strike off healthcare professionals in cases where there has been a lack of probity, honesty or trustworthiness. She further submitted that striking off orders have been upheld on

the basis that they are justified for reasons of maintaining trust and confidence in the profession.

Ms McGuinness submitted that in this case, as the panel have previously identified that there has been a lack of honesty and trustworthiness on Miss Ward's part and in terms of seriousness, Miss Ward's conviction and misconduct fall in the category of concerns that are considered so serious that they may be less able to be put right. Ms McGuinness reminded the panel of its previous findings and submitted that Miss Ward's conviction and her misconduct in relation to Charges 2, 3a and 3b have raised fundamental concerns about her trustworthiness as a professional. In relation to SG *FTP-1*, Ms McGuinness submitted that conduct that calls into question the basics of someone's professionalism raises concerns about whether they are a suitable person to remain on the register. She further submitted that it is more difficult for a registrant to remedy concerns of this kind and where they cannot, it would be difficult to justify them keeping their registered status.

Ms McGuinness submitted that Miss Ward's conviction and dishonesty are fundamentally incompatible with her remaining on the register. In relation to Miss Ward's dishonesty, Ms McGuinness referred to the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin) which outlines that a nurse or midwife who has acted dishonestly will always be at risk of being removed from the register. She submitted that Miss Ward's conduct raised fundamental concerns about her professionalism and public confidence in nurses and midwives cannot be maintained if Miss Ward is not removed from the register. She also submitted that a striking off order would be the only sanction that would sufficiently protect patients, members of the public and maintain professional standards as the actions which led to Miss Ward's conviction were a significant departure from the standards expected of a registered nurse. Ms McGuinness further submitted that Miss Ward breached the fundamental tenets of the profession, and her conduct is so serious that it is considered fundamentally incompatible with her remaining on the register.

Ms McGuinness submitted that the public's view of how a registered nurse should conduct themselves would be adversely affected by Miss Ward's conduct and allowing her to continue to practise would undermine public confidence in the

profession and the NMC as its regulatory body. Ms McGuinness submitted that anything short of a striking off order would not be sufficient or proportionate in this case. She further submitted that a striking off order is necessary for the protection of the public and to mark the importance of maintaining public confidence in the profession, and it would also send a clear message to the public and other registrants about the standards of behaviour expected of a registered nurse. Lastly, Ms McGuinness invited the panel to impose a striking off order in this case, for the reasons set out above.

Decision and reasons on sanction

Having found Miss Ward'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 features:

- Abuse of a position of trust and power as a registered nurse and holder of public office.
- Repeated requests for another person to lie to the police.
- Causing significant distress to another person (Witness 1)
- Lack of insight and remorse
- A pattern of misconduct over a period of time (11 weeks)

The panel also carefully considered mitigating features. The panel was of the view that Miss Ward's admission to Charge 1 and that there is no evidence of actual harm being caused to the patient or other patients who may not have received care when she was absent from her duties constituted some limited mitigation. In relation to no previous regulatory concerns, previous good character/history and engagement with the NMC, the panel considered these to be basic expectations of all registrants.

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 this would not ensure patient safety and it would be neither proportionate, nor in the public interest to take no further action as it would not show the public how seriously matters such as those proved are taken.

It then considered the imposition of a caution order but again determined that, due to the very serious nature of the charges, the conviction and Miss Ward's dishonesty, an order that does not restrict Miss Ward's practice would not be appropriate in these 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 Miss Ward's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case as it would not protect the public and is not sufficient to mark the seriousness of the charges. 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 Miss Ward's registration would be a sufficient and appropriate response. The panel noted that a conditions of practice order is typically imposed in cases where the regulatory concerns can be remediated by a registrant's strengthened clinical practice through learning and retraining. However, the panel determined that in Miss Ward's case, the concerns relate to a behavioural and attitudinal problem which cannot be addressed by a conditions of practice order. The panel was of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case and the misconduct identified, these are not things that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Miss Ward's registration would not adequately address the seriousness of this case and would not protect the public.

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

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

The panel was of the view that Miss Ward's conduct, as highlighted by the facts found proved and the seriousness of the misconduct, was a significant departure from the standards expected of a registered nurse. The panel considered that the actions were not a single event and had continued for 11 weeks. The panel noted that there was no evidence of any insight from Miss Ward and a suspension order in this case, which involves an abuse of power, dishonesty and deliberately breaching professional boundaries, would not sufficiently mark the seriousness of this case or the public interest. The panel also acknowledged that there is evidence of harmful deep-seated personality or attitudinal problems, clearly demonstrated by Miss Ward's actions and her attempts to cover them up. The panel considered that in cases involving criminal offences, the reputation of the profession is more important than that of any individual member and a registrant's right to work and remain on the register is not as important as maintaining the professional reputation of nurses. The panel was of the view that suspending Miss Ward's practice for a period of time may not change her attitudes and behaviour and a well-informed member of the public would be concerned if she were allowed to return to the register.

The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Ward's actions are fundamentally incompatible with Miss Ward remaining on the register.

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

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

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

Miss Ward's actions were a significant departure from the standards expected of a registered nurse and breached the fundamental tenets of the nursing profession as there were numerous breaches of the Code. The panel was also of the view that her proven actions are fundamentally incompatible with Miss Ward remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Ward's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. The panel determined that this is the only order that would sufficiently protect patients and members of the public, whilst maintaining professional standards and upholding public confidence in the nursing profession, by removing an individual with attitudes and behaviours that are not compatible with remaining on the register. Having regard to the effect of Miss Ward's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case as the charges raise concerns about Miss Ward's trustworthiness.

[PRIVATE].

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

This will be confirmed to Miss Ward in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Ward's own interests until the striking-off 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 McGuinness. She invited the panel to impose an interim suspension order for a period of 18 months on the grounds of public protection and otherwise in the public interest. She submitted that as the striking off order will not take effect until after the 28-day period or until an appeal is disposed of or withdrawn, an interim order is necessary to cover this intervening period to protect the public and meet the public interest in light of the panel's findings.

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 determined that the charges found proved are so serious that they warrant a striking off order therefore, Miss Ward should be restricted from practice during the appeal period.

The panel has therefore imposed an interim suspension order for a period of 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.