

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

**Substantive Hearing
Tuesday, 7 May 2024 – Tuesday, 14 May 2024
Thursday, 16 May 2024**

Virtual Hearing

Name of Registrant: Saffron Sumer Mitchell

NMC PIN 11F1086E

Part(s) of the register: Registered Nurse
Adult RNA – January 2012

Relevant Location: Bridgend

Type of case: Misconduct

Panel members: Paul O'Connor (Chair, lay member)
Katrina Maclaine (Registrant member)
Angela Kell (Lay member)

Legal Assessor: Trevor Jones

Hearings Coordinator: Nandita Khan Nitol

Nursing and Midwifery Council: Represented by Hena Patel, Case Presenter

Ms Mitchell: Present and represented by Carolina Bracken,
instructed by Royal College of Nursing (RCN)

Facts proved by admission: Charges 1a), 1b), 2a), 2b), 3a), 3b), 4 and 5 (in
relation to 3a), 3b) and 4).

Facts not proved: Charge 5 (in relation to 1a) and 1b))

Facts proved: Charge 5 (in relation to 2a) and 2b))

Fitness to practise: Impaired

Sanction: Striking-off order

Interim order: Interim suspension order (18 months)

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Patel, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 5. The proposed amendment was to delete the word '3c)' and insert the word '3b)' in charge 5 as there is no charge 3c within the schedule of charges. It was submitted by Ms Patel that the proposed amendment would provide clarity and more accurately reflects the other charges it related to.

The proposed amendment is as follows:

5) Your actions in one or more of charges 1a), 1b), 2a), 2b), 3a), ~~3c)~~ **3b)** & 4 above were dishonest, in that you sought to conceal your arrest/investigation/charges from your Employer.

Ms Bracken, on your behalf, stated that she did not object to the NMC's application.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed.

Details of charge (as amended)

That you a registered nurse, whilst applying for the role of/employed as a Functional Assessor at the Centre for Health and Disability Assessments (the Employer');

1) In or around 2021/2022, during a telephone screening/interview, did not disclose that you were;

a) Arrested in November 2020 for the conspiracy to supply controlled drugs;

b) Subject to an ongoing criminal investigation for the conspiracy to supply controlled drugs.

2) Around 5 January 2022, did not disclose in your application form, that you were;

a) Arrested in November 2020 for the conspiracy to supply controlled drugs;

b) Subject to an ongoing criminal investigation for the conspiracy to supply controlled drugs.

3) Between 1 February 2022 and 1 April 2022 whilst employed as Functional Assessor, did not disclose to your Line Manager/Employer that you were;

a) Arrested in November 2020 for the conspiracy to supply controlled drugs;

b) Subject to a criminal investigation for the conspiracy to supply controlled drugs.

4) Between 1 April 2022 and 29 May 2023, did not disclose to your Line Manager/Employer that you had been charged to appear at Court with one or more offences linked to conspiring to bring controlled drugs into HMP Parc.

5) Your actions in one or more of charges 1 a), 1 b), 2 a), 2 b), 3 a), 3 b) & 4 above were dishonest, in that you sought to conceal your arrest/investigation/charges from your Employer.

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

Background

On 17 November 2020 you were arrested by South Wales Police (SWP) on suspicion of conspiracy to Supply Drugs. This involved smuggling drugs into HMP Parc Prison –

Bridgend. On 26 November 2020, the NMC received a referral from SWP. You were charged with two offences and remanded on bail to appear before Cardiff Crown Court.

You were employed by the Centre for Health and Disability Assessment operated by Maximus (the Employer). You commenced your employment in February 2022. You had been employed as a Functional Assessor and the employer confirmed that you had not made them aware of your arrest and ongoing criminal investigation during the recruitment process, nor of the subsequent charges until 30 May 2023. On 14 August 2023 you were found not guilty of the two counts on the indictment when the prosecution offered no evidence.

Following a local investigation, you were dismissed on 22 September 2023 for gross misconduct.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Bracken, who informed the panel that you made full admissions to charges 1a), 1b), 2a), 2b), 3a), 3b) and 4. You made a partial admission to charge 5 (only in relation to charges 3a), 3b) and 4).

The panel therefore finds charges 1a), 1b), 2a), 2b), 3a), 3b) and 4 proved in their entirety. It also finds charge 5 (in relation to charges 3a), 3b) and 4)) proved, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Patel on behalf of the NMC and by Ms Bracken on your behalf.

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: Head of Nursing Professional Standards for health and Disability Assessments, employed by Maximus;

The panel also heard evidence from you under oath.

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

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

Charge 5

That you a registered nurse, whilst applying for the role of/employed as a Functional Assessor at the Centre for Health and Disability Assessments (the Employer’);

5) Your actions in one or more of charges 1a), 1b), 2a), 2b), 3a), 3b) & 4 above were dishonest, in that you sought to conceal your arrest/investigation/charges from your Employer.

At the outset of the hearing, you made full admission to dishonesty allegations in relation to charges 3a), 3b) & 4. Therefore, the panel will assess whether your conduct in charges 1a), 1b), 2a) and 2b) constituted dishonesty, as you allegedly sought to conceal your arrest/investigation/charges from your Employer.

In considering whether your actions were dishonest, the panel had regard to the test as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67:

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

The panel took into account the NMC Guidance document DMA- 8 '*Making decisions on dishonesty charges.*'

With respect to charges 1a) and 1b), the panel considered your admissions regarding your failure to disclose during a telephone screening/interview that you were arrested in November 2022 for the conspiracy to supply controlled drugs and that you were subject to a criminal investigation for the conspiracy to supply controlled drugs.

The panel considered your evidence regarding the initial telephone screening/interview, where you indicated that you could not recall being questioned about any police investigation or prosecution during that conversation. You explained that you took this call whilst at work, and described the dialogue as informal, primarily focusing on the job role and the procedural steps for employment.

The panel had regard to the template of the Clinical Recruitment Telephone Interview Form and heard from Witness 1 that its questions constitute the standard set typically used in screening interview. Witness 1 further provided email correspondence from the Human Resource department verifying that these were indeed the questions on the template in December 2021.

However, the panel noted that the Employer was not able to provide a completed Clinical Recruitment Telephone Interview Form for you from December 2021 and the lack of direct evidence establishing whether you were specifically asked about any police investigation or prosecution during the telephone call. The panel found the evidence provided by the NMC insufficient. The panel determined on the balance of probabilities that the NMC has not discharged its burden of proof in respect of charge 5 in relation to charge 1a) and 1b).

With respect to charges 2a) and 2b), the panel considered your admissions regarding your failure to disclose in your application form that you were arrested in November 2020 for the conspiracy to supply controlled drugs and that you were under investigation for the same offence.

The panel took into account your evidence where you said that you could not explain the reasons for not answering the question '*Have you been convicted or found guilty... is there any action pending against you?...*' as you were not sure at the time that whether it was relevant to the matters being investigated by the police. With regards to the question, '*Do you know of any other matters in your background which might cause your reliability or suitability to have access to government assets to be called into question*' you had answered '*NO*'. In your evidence, you said that you were scared that you would not get the job and they would question your character if you disclosed your arrest and ongoing police investigation to your prospective new employer. You also said in the formal disciplinary conduct meeting in July 2023 conducted by the Employer that you did not want your reputation tarnished. Additionally, you said that your legal team had high hopes that the charges would be dropped, and you hoped that you therefore would not need to disclose the matter. You also said in evidence that you were not open and honest when you did not tell your prospective employer that you were subject to a police investigation. However, you regret not disclosing details of your arrest and the ongoing police investigation to your prospective employer during the recruitment process.

The panel had regard to your completed application form dated 5 January 2022. It noted your failure to respond to the question regarding convictions and actions pending against you. The panel considered your evidence that at the time you were not sure that whether your circumstances were relevant to the question being asked. The panel noted that you answered '*No*' to the penultimate question in the form regarding your '*suitability*' where there was an option for you in the free typed section to explain your circumstances in relation to your arrest and police investigation. The panel determined that if you were not sure about your answers you had an opportunity to explain yourself in the free-typed section, but you failed to take that opportunity. The panel noted that you had not sought advice from your Employer on how to answer the question given your circumstances. The panel noted that during cross examination you accepted that you were scared and anxious that you might not be offered the job and for that reason you answered '*No*' to the question regarding suitability.

The panel concluded that the completion of an application form is a considered process which requires time and thought. As such, the panel considered that you sought to conceal your arrest and ongoing police investigation by your failure to disclose these details. The panel concluded on the balance of probabilities it was a deliberately dishonest act by you which did not meet the standards of ordinary decent people.

In light of the above, on the balance of probabilities, the panel found your actions within charge 5 relating to charges 2a) and 2b) were 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 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 and impairment:

Ms Patel's submissions:

Ms Patel submitted that facts found proved amounted to misconduct.

Ms Patel referred the panel to the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin)*, which defines the word serious as *'The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners'*. She also referred the panel to the case of *Roylance v General Medical Council (No. 2) [2000] 1 AC 311* which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Patel referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2018' (the Code) and reminded the panel that misconduct, in the regulatory context, must amount to serious professional misconduct. She identified several breaches of the Code to the panel and submitted that some instances in this case amounted to serious misconduct.

Ms Patel submitted that you had an ample opportunity to declare details about your circumstances and you also admitted that not disclosing the arrest and the investigation to your line manager was dishonest. Ms Patel pointed out to the panel that you applied for the position in December 2021 and until May 2023 you failed to disclose to your employer your arrest and ongoing police investigation. She also pointed out to the panel that you were undergoing an investigation for quite serious offences, and it took one year and five months for you to make disclosure about your arrest, police investigation and the charges against you.

Ms Patel submitted that there was a sustained period of dishonesty and that your actions detailed in each charge proved, individually and collectively, fell seriously short of the conduct expected of a registered nurse. She therefore invited the panel to take the view that the facts found proved amount to serious misconduct.

Ms Patel moved on to the issue of impairment and 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. She referred the panel to the cases of

Cohen v GMC [2015] EWHC 581 (Admin) and *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin). She submitted that all four limbs of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your actions.

Ms Patel submitted that risk of harm had been brought to patients due to your non-disclosure your arrest, criminal investigation and subsequent charges. She further submitted that this has brought the profession into disrepute and breached two of the fundamental tenets of the nursing profession, which are to uphold professionalism and trust.

Ms Patel acknowledged the background context and that you now accept that you could have acted differently. However, Ms Patel submitted that is not enough to demonstrate meaningful insight into the concerns nor an understanding of the potential impact to public confidence in the profession or the reputation of the profession. She further submitted that concealing your arrest and criminal investigation was dishonest, which is difficult to correct. She further submitted that given the long-standing deception, the panel cannot be satisfied that you have gone so far as to fully remediate this behaviour.

Ms Patel submitted that although there was no evidence of direct harm to patients, there remained a risk of harm, even if actual harm did not materialize in this case. She submitted that nurses occupy a position of trust in our society and reasonable members of the public, would be gravely concerned to learn that a nurse who has been dishonest was allowed to practice unrestricted.

Ms Patel submitted that given the seriousness of this case and the failings identified, the panel may conclude in the circumstances of this case, a finding of impairment on the grounds of public protection and also in the wider public interest is required, and that your fitness to practise is currently impaired.

Ms Bracken's response:

Ms Bracken accepted on your behalf that the facts found proved amounted to misconduct.

Ms Bracken submitted that any dishonesty by a Registered Nurse will bring the profession into disrepute. However, she submitted that there is no risk of harm to patients and that you should be allowed to continue to practice. Ms Bracken submitted that your dishonesty was an isolated event and not related to your practice. She further submitted that, although you did not disclose it to your prospective employer, you did disclose your arrest to your employer at the time.

Ms Bracken submitted that you did not disclose details of the criminal proceedings against you to your prospective employer because of the legal advice you received that the charges were likely to be dropped. Ms Bracken further submitted that it is difficult to discern a clear reason why you acted the way you did, but you have done your very best to explain with candour the [PRIVATE] you experienced at that very difficult time.

Ms Bracken submitted that there is no risk of repetition concerning public protection. She submitted that you have demonstrated that you will act honestly in the future by informing your current employer your arrest and police investigation. She further submitted that dishonesty is always serious but, in your case, it was a discrete and isolated act rather than attitudinal.

Ms Bracken submitted that you have demonstrated that you are no longer dishonest. She further submitted that you are very skilled nurse, and that public would want you to continue to work in the profession.

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 acts and omissions did fall significantly short of the standards expected of a registered nurse, and it considered them to amount to several breaches of the Code. Specifically:

'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.

23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had regard to the case of *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

It went on to consider each charge individually in determining whether your acts and omissions were sufficiently serious so as to amount to misconduct.

In respect of charges 1a) and 1b), the panel did not find your failure to disclose your arrest and criminal investigation during your telephone screening interview to be dishonest within charge 5 and as such did not find your conduct amounted to a misconduct.

In respect of charges 2a) and 2b), the panel determined that you had deliberately acted dishonestly by concealing details of your arrest and ongoing criminal investigation from

your then prospective employer in your application form. Your behaviour in concealing these concerns prevented your employer from conducting a proper risk assessment regarding your potential employment in order to determine whether you were a suitable candidate for the job.

Your dishonesty was a considered act motivated by personal gain as you were seeking new employment, and as noted in the record of the formal disciplinary meeting dated 27 July 2023, later approved by you, where it is noted '*...she was advised by her solicitor that she will be acquitted and didn't want to tarnish her reputation by communicating information that might not be true*'. The panel was of the view that your actions and omissions in charge 2a) and 2b) amounted to misconduct.

In respect of charges 3a) and 3b), you admitted dishonesty in not disclosing to your line Manager/Employer that you had been arrested and were the subject of a criminal investigation. In the panel's judgment, it was very concerning that you were dishonest over a sustained period of time. The panel determined that, during that time, you would have had plenty of opportunities to make a disclosure to your employer. Further, the panel noted that you chose to continue to conceal these details even after going through the induction process and compliance training. The panel determined that your actions and omissions were very serious and self-evidently amounted to misconduct.

In respect of charge 4, the panel found that the seriousness of the situation had escalated at the point that you were charged with offences linked to conspiring to bring controlled drugs into HMP Parc. The panel was of the view that by this time, having undertaken compliance training twice you should have known your duty to disclose the charges against you, you chose to continue to conceal them. The panel considered that your actions/omissions demonstrated a disregard for the NMC Code specifically 23.2 '*tell both us and any employers as soon as you can about any caution or charge against you...*'

The panel noted that it took you one year and five months to disclose your circumstances to your employer. This disclosure was only made when you were notified of the NMC commencing an investigation. In the panel's judgement, by being dishonest

in charge 4, you have breached one of the fundamental tenets of nursing profession to demonstrate your professional duty of candour. You had allowed your personal interest to outweigh your duty to be honest, open and truthful with your employer and the NMC. The panel decided that your actions in charge 4 did amount to serious misconduct.

In respect of charge 5, the panel considered honesty, integrity and trustworthiness to be the bedrock of the nursing profession and, in being dishonest in charges 2-4, it found you to have breached fundamental tenets of the nursing profession. While this dishonesty related to events outside of your clinical practice, the panel was concerned that your dishonesty had real implications concerning your working in a clinical environment and finds there is a real risk that you are likely to place patients at risk of harm, and if challenged you may not be open and honest. The panel determined that the dishonesty proved in charge 5 fell short of the standards expected of a registered nurse and is sufficiently serious to amount to misconduct.

The panel was of the view that other registered nurses would consider your dishonesty to be deplorable. The panel found that your conduct fell seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct which seriously undermines public confidence in the profession.

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.'

Registered 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 your failures in respect of not disclosing your arrest, criminal investigation and charges potentially placed patients at an unwarranted risk of harm as your misconduct in concealing these concerns prevented your employer from conducting a proper risk assessment of you in order to determine whether you were a suitable candidate for the job. The panel determined that your misconduct had breached the fundamental tenets of the nursing profession and that your actions brought the reputation of the profession into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty to be extremely serious. The panel found that all four limbs of the *Grant* test are engaged.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether your misconduct was remediable and whether it had been remedied. The panel then considered the factors set out in the case of *Cohen v GMC* [2007] EWHC 581 (Admin).

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

The panel acknowledged that you have engaged throughout the proceedings and have reflected on the situation which shows a degree of insight around the charges you had previously admitted to. The panel noted that there are no further concerns since the allegation raised against you and you had made a full and frank disclosure to your

current employers. You have also provided the panel with references which includes testimonials which speak to your good character.

The panel determined that your insight is developing in relation to your dishonesty. However, you are still focused on the personal difficulties you have experienced from the time of your arrest through to the NMC investigation, rather than focusing on the potential impact on patients or on the wider public confidence due to your conduct. Furthermore, the panel did not have sight of relevant training certificates or formal activities that enabled deeper reflection on your part to show evidence of strengthening of practice.

The panel is therefore of the view that there is a risk of repetition based on your limited insight into how your misconduct had the potential to impact patients and on the nursing profession. 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 are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession. Having regard to your dishonesty in this case and your serious departure from the requirements of the code to promote professionalism and trust, the panel determined that a finding of impairment is also necessary on public interest grounds.

In light of all the above, the panel concluded that your fitness to practise is currently impaired.

Sanction

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

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

Submissions on sanction

Ms Patel's submissions:

Ms Patel informed the panel that the NMC's position is that the only appropriate and proportionate sanction in this case is that of a striking off order. She referred the panel to the SG.

Ms Patel outlined the aggravating and mitigating features in your case.

Ms Patel submitted that no further action is not appropriate in your case as this will not protect the public nor uphold public interest. She stated that a caution order is also not appropriate for the same reasons as more must be seen to be done given the charges pertaining to your dishonesty which had been proved or admitted. She further submitted that imposing a conditions of practice order would not sufficiently protect the public as there is evidence of the deep-seated attitudinal problems associated with your dishonesty, and therefore, that this order would neither protect the public nor uphold public interest. Ms Patel also emphasised that there were no workable, reasonable conditions that would address the risks identified. Ms Patel submitted that a suspension order is not sufficient to address the seriousness of the concerns identified and to meet the NMC's overarching objective. She submitted that the seriousness of the charges found proved in this case requires more than temporary removal from the register and that by breaching The Code your actions amounted to a serious departure from what is expected of a nurse.

Ms Patel submitted that the nature and seriousness of misconduct called into question your integrity and professionalism. She submitted that your dishonesty was serious,

sustained for a significant period of time and resulted in personal financial gain. Given the criminal investigations and subsequent charges against you, your actions denied the employers opportunity to enact their duty of care to conduct relevant screening, and put appropriate safeguarding in place and therefore placed patients at potential risk of harm. She submitted that your dishonesty and limited insight are an indication of deep-seated attitudinal concerns. Ms Patel, therefore, submitted that a striking-off order is the only appropriate and proportionate order that does not undermine the trust and confidence in the profession.

Ms Bracken's response:

Ms Bracken invited the panel to consider imposing a sanction that would allow you to continue your career as a nurse. Ms Bracken submitted that given your dishonesty it might seem more appropriate for the panel to impose a suspension order. However, it would put a stop to the excellent work you are doing within your current employment. She suggested that the panel may be of the view that you should be afforded an opportunity to demonstrate that you can rectify your misconduct moving forward, and could facilitate this with a conditions of practice order rather than a striking off order.

Ms Bracken submitted that your insight is not complete, but it is developing and demonstrated by your partial admissions to the charges. She submitted that your dishonesty does not suggest that you have deep-seated attitudinal issues which would be fundamentally incompatible with good practice. She explained to the panel that your dishonesty was prolonged, but it was a discrete episode of dishonesty. Ms Bracken requested that the panel take account of your [PRIVATE] circumstances at the time. She also submitted that one of your current employers (for whom you worked previously) had welcomed you back with open arms and that there is no further suggestion of dishonesty in the workplace or otherwise.

Ms Bracken submitted that there is no risk to patients and your engagement and openness with your current employers had given them the opportunity to conduct risk assessments. Ms Bracken submitted that you have demonstrated that you are less likely to repeat your mistake again. She submitted that the panel's comments about

your training in the impairment stage is noted and that you are willing to positively respond to retraining.

Finally, Ms Bracken invited the panel to impose an interim conditions of practice order with the inclusion of the following conditions which would be workable, measurable, and proportionate and would allow you to develop further insight whilst at the same time providing protection for the public and being in the public interest:

- Supervision
- A requirement to demonstrate further insight through submission of reflective pieces.
- Evidence of training

Ms Bracken emphasised that all would need the support of an employer. Furthermore, it is evident in the references from one of your current employers that they are supportive of you and therefore may give you the opportunity to make the proposed conditions work.

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:

- You placed patients at an unwarranted risk of harm in concealing your arrest, criminal investigation and charges which prevented your employer from conducting a proper risk assessment of you to determine whether you were a suitable candidate for a job involving the assessment of vulnerable adults.

- You did not inform your employer in relation to your arrest, ongoing criminal investigation and charges for a sustained period of time despite this escalation of the seriousness and the multiple opportunities you had to work to the principles of The Code, by coming forward and disclosing matters.
- You only told your employer when forced to do so due to impending NMC proceedings.
- You had allowed your personal interest to outweigh your duty to be honest, open and truthful with your employer and the NMC.
- You abused a position of trust.
- You have demonstrated insufficient insight, with the primary focus of your reflection and remorse being on the negative impact the NMC investigation has had on yourself rather than the impact on the employer, the profession and the public.
- There has not been any evidence of your consideration of how you will maintain your honesty during any future challenging personal and professional times.
- Your pattern of misconduct was over a lengthy period of time.
- You demonstrated a number of breaches of and showed a lack of regard for The Code.

The panel also took into account the following mitigating features:

- You have shown a degree of insight around the charges you had previously admitted to, albeit predominantly in relation to the impact on you personally.
- You have disclosed the details of the criminal proceedings to your subsequent employers.
- You have a record of previous good character and are now working with a supportive employer who has attested to your current good conduct and character.
- You apologised and admitted most of the charges.
- [PRIVATE].

The panel noted that Ms Bracken, on your behalf, said that no further action nor a caution order would be appropriate in your case. The panel nonetheless went on to make it's own judgement of the matter taking account of the applicable guidance.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the charges proved and breaches of two of the fundamental tenets of the profession, namely professionalism and trustworthiness. The panel decided given the findings of misconduct and impairment that it would be neither proportionate, protect the public 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 therefore be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate sanction. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges found proved. The panel determined that this is a case of long-standing dishonesty with numerous occasions on which you sought to conceal matters. As such the panel's judgement is that there is evidence of underlying deep-seated attitudinal concerns, and that a conditions of practice order would not protect the public nor serve the public interest.

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 determined that none of the factors as set out above are fully present in this case and therefore it determined that a suspension order was not the appropriate or proportionate sanction.

The panel considered that whilst the incidents in this case occurred in an isolated period of time in your career as a nurse, they did not involve a single instance of misconduct. They involved repeated incidents of dishonest behaviour and deliberate concealment on your part over a period of one year and five months. The panel considered this to be serious and, whilst noting your superficial reflection, found that there is evidence of deep-seated attitudinal problems.

The panel acknowledged that there was no evidence to suggest you had repeated the dishonest behaviour since May 2023, but in the intervening time, you have failed to demonstrate sufficient insight into the importance of honesty and integrity to the role of a Registered Nurse. Consequently, the panel considered that there remains a risk of you repeating the misconduct.

The panel reminded itself of its findings at the impairment stage. Whilst you had accepted the factual findings of the panel, and that the charges found proved amount to misconduct, the panel was not satisfied that you had taken full responsibility for your actions and shown sufficient understanding of why they were wrong. The panel concluded that you had demonstrated insufficient understanding of how your actions impacted on your employer, on public trust in the nursing profession and the potential impact on patients.

Taking all of this into account, given the serious level of dishonesty in this case and the lack of sufficient evidence of insight, the panel did not consider that a period of suspension would be sufficient to protect patients and maintain public confidence in the profession.

Finally, in considering 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?*

Your misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with your remaining on the register.

The panel considered your dishonest behaviour, which involved concealing your arrest, ongoing criminal investigation and charges from your employer. It considered that this concealment was a sustained deliberate deception over a period one year and five months for the purpose of personal financial gain. The panel was of the view that it was your duty to inform the NMC (as set out in 23.2 of The Code) and your prospective employer of the ongoing criminal investigation and later charges. The panel determined that your behaviour and your failure to disclose the truth of your position until you were forced to do so, was wrong from the outset. The panel concluded that this was fundamentally incompatible with being a registered professional.

The panel is aware that honesty and integrity are fundamental tenets of the nursing profession, and it considered that your behaviour raised fundamental questions about your professionalism and trustworthiness.

The panel noted the hardship such an order may cause you and has taken full account of all that has been put forward on your behalf in this regard. However, this is outweighed by the public interest in this case.

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. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case. It determined that a striking off order sufficient to protect patients and members of the public and to maintain public confidence in the profession.

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

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 your own interest until the striking-off sanction takes effect.

Submissions on interim order

Ms Patel submitted that an interim suspension order was necessary for the protection of the public and is otherwise in the public interest. She relied on the panel's earlier findings of misconduct and impairment to support that submission. She therefore invited the panel to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period and for any potential appeal to be lodged and considered.

Ms Bracken submitted that there have been no subsequent concerns about your dishonesty. She submitted that you will have to deal with the consequences of your past dishonesty which has been found proved after full assessment. She asked the panel to consider the impact of an immediate suspension order on the employer and the profession. Ms Bracken invited the panel to put particular scrutiny on the practicality of imposing any further interim order.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

Having regard to the findings of dishonesty in this case, the panel considered that an interim order is necessary to protect the public and is otherwise in the public interest. Given the seriousness of the misconduct in this case and the reasoning for its decision to impose a striking-off order, the panel considered that to not impose an interim order would undermine its previous findings.

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 striking-off order.

The panel therefore imposed an interim suspension order for a period of 18 months which it considered to be proportionate to cover the 28-day appeal period and the period of time in which any appeal may be heard. If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to you in writing.

