Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Monday, 30 June 2025 – Monday, 7 July 2025

Nursing and Midwifery Council
2 Stratford Place, Montfichet Road, London, E20 1EJ

Name of Registrant:	Sunday Okoli
NMC PIN:	14D1558E
Part(s) of the register:	Registered Nurse Sub Part 1 Mental Health - (Level 1) - 09 October 2014
Relevant Location:	East Sussex
Type of case:	Misconduct
Legal Assessor:	Charles Apthorp
Hearings Coordinator:	Priyam Jain
Nursing and Midwifery Council:	Represented by Stephanie Stevens, Case Presenter
Mr Okoli:	Present and represented by Adewuyi Oyegoke
Facts proved by way of admission:	Charge 1a, 1b, 1c, 1d, 2 and 3
Facts proved:	N/A
Facts not proved:	N/A
Fitness to practise:	**Impaired**
Sanction:	**Suspension order (12 months)**
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, Mr Oyegoke, on your behalf, made a request that this case be held partly in private on the basis that proper exploration of your case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Stevens, on behalf of the Nursing and Midwifery Council (NMC), indicated that she supported the application to the extent that any reference to [PRIVATE] should be heard in private.

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.

The panel determined to go into private session as and when matters in relation to [PRIVATE], in order to protect your privacy and that of your family.

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Stevens to amend the charges.

The proposed amendment was to combine Charge 1e and 1f to Charge 2 and combine Charge 2 and Charge 3 to the amended Charge 3. It was submitted by Ms Stevens that the proposed amendment would provide clarity and more accurately reflect the evidence.

Mr Oyegoke did not object to the amended charges.

Original charges (showing changes applied for):

"That you, a registered nurse:

1. Whilst working as the nurse in charge, during the night shift of 18 to 19 January 2023:

    a. Arrived late for your shift between 20:00 to 20:30 when you were meant to start at 19:00.
    b. Did not record and or carry out patient observations during the night shift.
    c. Did not provide a written handover at the end of the shift to the morning staff and or nurses.
    d. Slept whilst on duty when you were not supposed to.
    e. ~~Recorded on a timesheet that you had worked from 19:00 to 07:30 when you had not~~.
    f. ~~Submitted the document as mentioned in charge 1 (e) to Langley Clark Recruitment for payment.~~

2. ~~Your conduct at charge 1 (e) was dishonest in that you sought to create the impression that you had worked from 19:00 to 07:30 when you knew that you had not~~.

    Following your night shift of 18 to 19 January 2023, recorded and submitted a timesheet to Langley Clarke Recruitment that you had worked from 19:00 to 07:30 on that night shift, when you had not.

3. ~~You conduct at charge 1 (f) was dishonest in that you submitted the timesheet for financial gain when you knew you had not worked the hours.~~

    Your conduct at Charge 2 was dishonest in that you represented to Langley Clark Recruitment that you were entitled to receive payment for the hours stated in the timesheet when you knew that you were not.

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

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

The panel was of the view that such amendments, as applied for, were 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 amendments being allowed. It was therefore appropriate to allow the amendments, as applied for, to ensure clarity and accuracy.

Details of charge (as amended)

'That you, a registered nurse:

1. Whilst working as the nurse in charge, during the night shift of 18 to 19 January 2023:
    a. Arrived late for your shift between 20:00 to 20:30 when you were meant to start at 19:00.
    b. Did not record and or carry out patient observations during the night shift.
    c. Did not provide a written handover at the end of the shift to the morning staff and or nurses.
    d. Slept whilst on duty when you were not supposed to.

2. Following your night shift of 18 to 19 January 2023, recorded and submitted a timesheet to Langley Clarke Recruitment that you had worked from 19:00 to 07:30 on that night shift, when you had not.

3. Your conduct at Charge 2 was dishonest in that you represented to Langley Clark Recruitment that you were entitled to receive payment for the hours stated in the timesheet when you knew that you were not.

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

Background

The charges arose whilst you were employed as a registered mental health nurse by Langley Clark Recruitment Agency (the Agency) and whilst working at the Hellingly Centre, a Forensic Healthcare Centre in Sussex Partnership NHS Foundation Trust (the Trust). You were referred to the NMC by ACI Training and Consultancy Ltd who received a complaint from the Trust.

The concerns arose during a night shift you worked on 18 and 19 January 2023 at the Hellingly Centre. The Trust's bank team booked you via the Agency to work a total of seven night shifts on Elm Ward (the Ward). The Hellingly Centre is a secure Hospital, comprising of three medium secure wards and one low secure ward.

You had worked a total of six night shifts previously on the Ward. On 18 January 2023 you were booked to work your seventh shift. The Ward is expected to have four members of staff present on the overnight shift, one being a registered nurse. On the 18 January 2023 a total number of four staff members were present, you being the nurse in charge and three health care assistants (HCAs).

You arrived late for your shift on 18 January 2023 between 20:00 to 20:30 when you were supposed to start at 19:00. You also did not record or carry out patient observations during your night shift and failed to provide a written handover to the morning staff or nurses. You slept whilst on duty and following your night shift, you recorded and submitted a time sheet to the Agency that you had worked from 19:00 to 07:30 on that shift, when you had not. You also requested payment for the hours stated in your timesheet when you knew that you had not worked for those hours.

Decision and reasons on facts

Prior to the start of the hearing the panel was provided with the following documents from the NMC:

1. A Witness Statement bundle comprising of signed statements from:

- Witness 1, employed by the Trust as a Lead Nurse Quality & Compliance/NMC;
- Witness 2, employed by the Trust as an Interim Ward Manager and a Clinical Nurse Specialist;
- Witness 3, employed by the Sussex Partnership NHS Foundation Trust as a Security Manager within the Forensics Services;
- Witness 4, employed by ACI Training and consultancy limited as a Nursing Complaints coordinator;
- Witness 5, employed by Sussex Partnership NHS Foundation Trust as a Charge nurse

2. An Exhibit bundle, including:

- Correspondence relating to the Trust's investigation;
- Door Fob data;
- CCTV footage;
- Handover record;
- Patient notes, and;
- Your reflective statement form to the Trust.

On the first day of the hearing, the panel was provided with a defence bundle including:

- Your reflective piece dated June 2025;
- Employer's and Character references;
- Certificates for training undertaken in June 2025;
- [PRIVATE], and;
- Timesheets for work undertaken by you between February 2023 and June 2025.

In addition, on the first day of the hearing the panel was provided with an agreed statement of facts.

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.

At the outset of the hearing, the panel heard from your representative, Mr Oyegoke, who informed the panel that you admitted to all the charges.

The panel therefore found all charges proved in their entirety, by way of your admission.

The witnesses listed above had been invited by the NMC to attend the hearing and give live evidence but were not required following your admissions to all the charges.

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

In coming to its decision, the panel had regard 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.'*

The panel heard submissions from Ms Stevens, and from Mr Oyegoke. You did not give evidence. Questions from the panel and Ms Stevens were put to you via Mr Oyegoke and answered by him on your behalf.

Ms Stevens invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Stevens identified the specific standards which your actions breached and amounted to misconduct: 1, 1.2, 8, 8.2, 8.5, 8.6, 10, 10.1, 20, 20.1, 20.2, 21 and 21.3. As a result of your admission to all the charges Ms Stevens submitted that they are serious in nature.

In relation to Charge 1a, Ms Stevens submitted that you were the only registered nurse on duty and in charge for that shift. By arriving late patients were left without appropriate care which amounts to serious misconduct. In relation to Charges 1b and 1c, she submitted that these charges are clinical in nature, but the omission of these duties does amount to misconduct. She submitted that patients were dependent on you for care and observations. These failures, as well as Charge 1d, sleeping during the shift, undermined the nursing profession and put your patients at risk of harm.

In relation to Charges 2 and 3, Ms Stevens submitted that recording and submitting an incorrect timesheet and requesting payment for the hours not worked amounted to serious misconduct. She submitted that you being dishonest with your employer was unacceptable and not what is expected of a registered nurse, and amounted to a deep-seated attitudinal issue. Ms Stevens further submitted that your actions were capable of undermining public trust and confidence in the nursing profession.

Ms Stevens reminded the panel that seriousness is an important concept which informs various stages of the regulatory processes. She submitted that taking into consideration public confidence and trust in the nursing profession, your behaviour must amount to serious misconduct.

Mr Oyegoke submitted that although you have admitted to all the charges, it is within the power of an independent panel to take a holistic approach when dealing with misconduct and impairment. He submitted that any allegation of misconduct must be taken seriously but overall, your fitness to practise must be based on your current conduct and not on the conduct dated 18 and 19 January 2023.

Mr Oyegoke accepted that your conduct on 18 January 2023 may amount to misconduct, but it should not lead to a finding of impairment today.

Submissions on impairment

Ms Stevens 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. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Stevens referred the panel to the considerations as outlined in the decision of *Cohen v General Medical Council* (2008) EWHC 581 (Admin); namely:

> *"…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 which the public expect… and that public interest includes amongst other things the protection of patients and maintenance of public confidence in the profession".*

Ms Stevens also referred the panel to the four “limbs” as referred to by Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council and (2) Grant* [2011] EWHC 927 (Admin):

> *‘Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/their fitness to practise is impaired in the sense that S/He/They:*
>
> *a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.’*

Taking the Grant limbs in turn, Ms Stevens submitted, in relation to limb a), that your conduct did put patients at an unwarranted risk of harm. You were the only registered nurse allocated to that shift and arriving late meant that you were not present for the clinical handover and that patients were left without the care of a registered nurse until your arrival, which led to a risk of harm. She further submitted that sleeping on duty put patients at an increased risk of harm without appropriate care, as did an absence of clinical observations.

In relation to limb b), Ms Stevens submitted that defrauding your employer and not carrying out patient observations and documenting records, does bring the profession into disrepute and breaches standards of the code. She submitted that your conduct not only brought the wider nursing profession into disrepute but also affected public confidence.

Ms Stevens, in relation to limb c) ,submitted that fundamental tenets of the nursing profession had been breached, along with the absence of basic professional standards expected of a nurse by you placing your needs ahead of your patients' needs. She also submitted that you did not administer effective care and promote trust, which led to a serious breach of trust and professionalism.

Ms Stevens, in relation to limb d) ,submitted that you deliberately completed your timesheet incorrectly and on being queried by the agency, you denied it. She referred the panel to your reflective statement form submitted to the Agency at the time of the Trust investigation:

> *'I find this complaint unbelievable as could a nurse really be asleep for 4 hours then approximately 3 hours on a ward with none of the other staff taking any action? So, in answer to points 1 and 2, no I was not asleep and actually did not have a break that night.*
>
> *In response to point 3, it is unclear what is meant by detailed as that sounds subjective and as the patients were asleep for most of the night, I documented as appropriate. The allegation that I wrote activities that did not occur is untrue.*
>
> *Lastly, it was agreed with … that I would be paid for the entire shift since I was contacted late however it is clear that I should have asked for written confirmation. With regards to leaving early, if you are aware of how shifts work, it is impossible to leave early and with handovers it is also highly unlikely to be able to leave on time. I have just checked the time sheet that I resent to … as the first had an error and it clearly states 19:00 - 07:30.'*

Ms Stevens submitted that you had agreed your dishonest conduct was for financial gain. This, as well as denying your actions to your employer further breached the foundations of the nursing profession. She further submitted that your dishonest conduct brought the nursing profession's reputation into disrepute, and that

confidence in the nursing profession would be undermined if there was no finding of impairment following such serious misconduct.

Ms Stevens referred the panel to NMC guidance FTP-15a '*Can the concern be addressed?'* where it states:

> *'Decision makers should always consider the full circumstances of the case in the round when assessing whether or not the concerns in the case can be addressed. This is true even where the incident itself is the sort of conduct which would normally be considered to be particularly serious.*
>
> *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?'*

Ms Stevens submitted that there is evidence of deep-seated attitudinal issues and that arriving late, sleeping on shift, and being dishonest for personal financial gain does amount to the same. She submitted that your failure to carry out patient observations also demonstrated deep-seated attitudinal and behavioural issues.

Ms Stevens referred the panel to NMC guidance FTP-15b '*Has the concern been addressed?'* where it states:

> *'Before effective steps can be taken to address concerns, the nurse, midwife or nursing associate must recognise the problem that needs to be addressed. Therefore, insight on the part of the nurse, midwife or nursing associate is crucially important.*
>
> *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*
- *understand how to act differently in the future to avoid similar problems happening.'*

Ms Stevens, in relation to any insight and remediation, referred the panel to your reflective statement where you stated:

> *'I became defensive when I was challenged with my wrongdoing, my ego became hyperinflated. I responded with an unreasonable assertion that my agency had agreed to pay me for full hours including those that I did not work. I acted stupidly for not taken the opportunity to resolve the matter at the time.'*

She submitted that, although your reflective statement did show signs of remorse and some understanding of the impact of your misconduct on your colleagues, the wider public and the nursing profession, you have shown limited insight into why you acted in the way you did. Ms Stevens submitted that this related in particular to your dishonesty and that there is little evidence of insight into why you behaved dishonestly in that situation.

Ms Stevens also referred the panel to your recent reflective statement where you stated:

> *'I have sought to make restitution by contacting the Sussex Partnership Foundation NHS Trust. I tried in the first instance to contact Langley Clark Recruitment who was my primary employer at the one of the incidents leading to my referral, but their phone numbers are disconnected, I sent a recorded letter which was returned to me undelivered. I discovered that they may be in liquidation. I later contacted ACI Training and Consultancy Services who said they were contracted at the time by Langley Clark Recruitment and do not do any work for them again, I was directed to write to the Finance Department Sussex Partnership Foundation NHS Trust to request for an opportunity to pay back the amount that the Trust had lost on that shift including the commission they might have paid on top of such amount to the Langley Clark. I await their response.'*

Ms Stevens submitted that you had delayed attempting to pay back the payment owed to the organisation until June 2025, just prior to the start of this hearing. She also submitted that your admissions to the charges, together with your reflective piece could have been provided much earlier. Ms Stevens informed the panel that the NMC's full investigation report had been sent to you on 27 June 2024. She stated that you had plenty of time to engage with the NMC and to demonstrate insight and provide evidence of remediation, but you did not do so until this hearing. Further, in relation to the training certificates you have provided, this training was also undertaken only very recently.

Ms Stevens submitted that it is necessary for the panel to consider whether the public's confidence in the nursing profession would be appropriately maintained if no finding of impairment were to be made. She submitted that fellow professionals would find your actions were deplorable. She submitted that the charges found proved raise fundamental questions about your attitude, integrity and trustworthiness as a registered professional and seriously undermine public trust in nurses, midwives and nursing associates.

Ms Stevens further submitted that your conduct was such that a finding of impairment should be made to uphold confidence in the profession and maintain professional standards. She therefore invited the panel to also find your fitness to practise is currently impaired on public interest grounds.

Therefore, Ms Stevens submitted that a finding of impairment is required to mark your unacceptable behaviour and breaches of the fundamental tenets of the nursing profession, and to reaffirm proper standards of behaviour of nurses.

Mr Oyegoke submitted that an isolated incident of misconduct does not amount to your current fitness to practise remaining impaired. He took the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2), Grant* [2011] *EWHC 927 (Admin), Wisson v Health Professions Council [2013] EWHC 1036 (Admin), The Law Society [2007] EWHC 414 (Admin), Nandi v General*

Medical Council [2004] EWHC 2317 (Admin) and Dr Martin v General Medical Council [2014] EWHC 1269 (Admin).

Mr Oyegoke referred the panel to Witness 2's statement which reads:

> *'If the incident had happened with a full-time staff member, we would have offered the nurse supervision and support to identify why the incident had occurred. I acknowledge that there's a shortage of staff, but in any situation, we have to ensure patient care is being fulfilled. As a manager, I need to make sure staff are fit to work and feel supported, which is why the concerns were raised.'*

Mr Oyegoke took the panel through the four limbs of the Grant case and in relation to limb a), submitted that you do not pose any risk of harm to any patient. He submitted that you were offered the shift at the last-minute and that the hospital is a forensic unit with live security and that you entered the hospital earlier than the time you started work on the Ward. Mr Oyegoke also referred the panel to the details of your fob activity included in the exhibit bundle, indicating that you had been active on the Ward for some time at the beginning and end of your shift. He submitted that your conduct did not bring the profession into disrepute. [PRIVATE].

Mr Oyegoke submitted that limb c) was not entirely engaged since, although dishonesty is a breach of the code, this instance was not the most serious form of dishonesty. Your conduct should be looked at holistically, and the chain of events should be understood. He submitted that your conduct does not entirely engage the fundamental tenets of the nursing profession.

My Oyegoke submitted that your conduct on 18 January 2023 was a one-off isolated incident that had not occurred before and has not been repeated after these allegations arose. He submitted that your conduct in relation to the facts found proved does not affect your fitness to practise and that your integrity remains intact.

In relation to insight and remediation, My Oyegoke took the panel through your evidence of remediation bundle which contains your recent reflective piece, current

employer reference, feedback forms, testimonials and character references and certificates of training undertaken. He submitted that you have received commendable and excellent feedback from your current employer and colleagues on your performance and that there is no current risk of harm to patients based on your excellent performance and behaviour.

Mr Oyegoke submitted that during the course of your nursing career your colleagues attest to your excellent performance, your ability to provide care and conduct observations. Mr Oyegoke submitted that your conduct since the time of the allegations is evidence of your developed insight and remediation.

Mr Oyegoke submitted that your reflective piece and relevant training undertaken do demonstrate you have developed insight and have strengthened your practice. He submitted that your positive testimonials and references demonstrate your ability to administer safe and effective care and practise safely, kindly and professionally, which would not expose the wider public to any risk of harm or repetition of your past behaviour. He submitted that your recent admission of the facts comes from an understanding of how your behaviour and misconduct impacted the wider nursing profession, your colleagues and your employer and that you have demonstrated remorse through your reflective piece.

Mr Oyegoke also submitted that post the incident you have made an attempt to contact your employer to pay back the money you made for your personal gain, and you wanted to remedy your misconduct. However, you have realised that the business is now out of service. Mr Oyegoke referred the panel to a copy of your letter to the Trust dated 23 June 2025:

> *'I therefore write to request an opportunity to refund the amount I have been over paid when I submitted the timesheet for the shift 18 January 2023 from 1900 to 0730 when I was actually only the ward from 2006 to 0726.'*

When asked by the panel about why you did not engage with the NMC during much of the time of its investigation until recently, Mr Oyegoke submitted that you did not

respond to the communications you received as you had difficulty accessing the emails.

Mr Oyegoke referred the panel to the training certificates in your bundle, dated 20, 21, 22 and 23 June 2025. He submitted that you undertook these training courses on your own and self-sponsored the same as you realised you needed to refresh your skills. He confirmed to the panel that at the time of the incident your training had been up to date.

[PRIVATE].

Mr Oyegoke submitted that you had many positive testimonials from your colleagues and current employer and character references to attest to your previous conduct being an isolated incident. Your behaviour and performance since then and before the incident was commendable. He submitted that you have understood the allegations in full and remedied your conduct by developing further insight and remorse and that no risk of harm or repetition exists. He submitted that you have demonstrated remorse, and your reflective piece shows that you apologise for your conduct to your employer and colleagues and that you now have a deeper understanding of how your conduct might have brought the nursing profession into disrepute.

You were asked about your own personal "*risk assessment*" before accepting work, in that you do not now accept shifts at short notice or when you will be the only nurse in charge. Mr Oyegoke submitted that this shows you have reflected on the incident and that it is an ongoing process of learning. He submitted that you now perform a risk assessment for each shift and are observant of your conduct. When asked about what you have been doing since the time of the incident, Mr Oyegoke submitted that you had undertaken training courses to refresh your skills and knowledge and that you have reflected on your behaviour and conduct. When asked whether you had any explanation as to why you had chosen to sleep during your working hours and not conduct clinical observations or complete clinical records, Mr Oyegoke submitted that no one had brought any issue to your attention during the shift, and that the unit was quiet and there were no patients requiring attention.

Mr Oyegoke submitted that your developed insight, remorse and training undertaken, along with the reflective piece and testimonials received show a significantly low risk of repetition. He submitted that your conduct was an isolated incident and that your fitness to practise is no longer impaired. He submitted that there is no risk of harm on the grounds of public protection or public interest as there have been no concerns since the incident, and that you have continued to administer safe and effective practice since then.

Mr Oyegoke submitted that your dishonest conduct is more of a public interest issue than a public protection issue, but that your reflection demonstrates your awareness that it is the public's money you had gained and that you are ready to give it back. He submitted that in your 11-year nursing career this incident is a one-off and it has not been repeated since. Further your positive feedback and commendable testimonials demonstrate there is no risk of repetition and despite your misconduct a finding of impairment is not necessary. He submitted that you are not currently impaired and that you can practise kindly, professionally and safely as a registered nurse.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council [2004] EWHC 2317 (Admin), Remedy v GMC [2010] EWHC 1245 (Admin), Cohen v GMC [2008] EWHC 581 (Admin) and Lusinga v Nursing and Midwifery Council [2017] EWHC (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.

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

‘1 Treat people as individuals and uphold their dignity
To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

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

4 Act in the best interests of people at all times

8.2 maintain effective communication with colleagues

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

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

10.1 accurately assess signs of normal or worsening physical and mental health in the person receiving care

20 Uphold the reputation of your profession 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

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

21 Uphold your position as a registered nurse or midwife

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care'

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 the charges admitted and proved are serious.

In its consideration on whether the concerns in this case amount to misconduct, the panel found that Charge 1a does not amount to misconduct, as arriving late for your shift on one occasion is not sufficiently serious to amount to misconduct.

The panel did find misconduct on Charges 1b, 1c, 1d, 2 and 3. It noted that your behaviour fell far below the standards of the code of conduct and has brought the nursing profession into disrepute. The panel determined that you put your needs above the needs of your patients, who were dependent on your care as you were the only nurse on shift at the time. Choosing to sit in the open social space and sleep for a substantial part of your shift demonstrated a lack of support towards other staff members; something that they had a right to expect. This, together with your failure to carry out any basic patient observations does amount to serious misconduct. In the panel's view, this is compounded by the fact that at least two of the patients were identified as being of particular concern that night, something of which you were fully aware.

The panel had regard to all the documentation including the information provided from the Trust investigation, including the following completed by Witness 2, Ward Manager, which stated:

‘It is an expectation for any staff on a waking night to be awake, as they are part of a 3-person team on the ward (4th person on shift is allocated their break). This is a patient safety issues and also, we expect staff to be able to respond to emergencies when needed. Staff are to be vigilant at all times for any loud noises in patients’ bedrooms that could mean different things/ risky behaviours including tying ligatures, physical health concerns, restraints – on our ward and across the centre in the hospital. We work in a forensic ward, where patients we look after have committed serious index offences.

As an impatient service, we often deal with safeguarding issues for patient against patient concerns where the ward needs to be observed continuously in a covert manner. Subsequently, if the nurse in charge is asleep most of the night, we are putting patients at risk and we are failing to protect them from potential harm. Additionally, if a senior member of staff on shift is sleeping, it leaves unqualified staff in a compromising position and without the guidance of a trained nurse to manage patient risk to self and others. Moreover, a member of staff sleeping on shift suggests that this is the way a qualified member of staff behaves.’

The panel also noted the following from Witness 2’s witness statement:

“The risks of not providing a written handover include potential patient neglect. In this case, a patient complained about a physical health issue, which Mr Okoli failed to document. This increased the risk of patient harm because the day shift nurses would have been unaware of the issue, causing delays to any treatment required. The outcome could be catastrophic in some cases.”

And,

“In terms of the risks posed to the patients, we had just come out of the Covid 19 pandemic at the time, so we would have had to be content that any chest related issues were followed up on. For example, the patient might have needed to be put in isolation, or we might have needed to escalate to A&E. In these situations, the nurse should be checking the patients vitals throughout

the night, as a drop in their saturation or blood pressure would indicate a need to escalate the patients clinical care to a doctor."

The panel also took into account that you fraudulently recorded and submitted your timesheet; firstly, for the time you were not in attendance on the ward, and secondly, for the time you were asleep and therefore not carrying out your duties as a nurse. The panel took careful regard of the CCTV footage and key fob data and concluded that you had been asleep on shift for a substantial amount of time. This was done for your own financial gain. The panel concluded that this behaviour also amounts to serious misconduct. The panel considered that your conduct demonstrates a disregard for the fundamental standards expected of a registered nurse. Taken together and for all these reasons, your actions amount to a breach of your professional duties, fell seriously short of the conduct and standards expected of a nurse, were serious breaches of the Code, and therefore constitute serious professional misconduct.

Decision and reasons on impairment

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

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

'The question that will help decide whether a professional's fitness to practise is impaired is:
"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"
If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses to care for them in line with the fundamental tenets of nursing at the most vulnerable

moments of their lives or 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/They:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

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

The panel determined that limbs 'a', 'b,' 'c' and 'd' of *Grant* are engaged in this case. The panel concluded that there was a risk of harm to patients under your care as a result of your misconduct. The panel noted that as the only nurse on duty that night, you were in a position where other colleagues looked up to you and that you were expected to lead by example. The panel also had regard to the fact that for many hours of your shift you had been either relaxing or sleeping in the Ward's open social space, which was used by both patients and staff, and therefore able to be clearly observed. It was a Health Care Assistant (HCA) colleague, also on shift that night, who had alerted the Trust to your actions. In addition, the panel also had regard to the witness statement of Witness 2, who stated:

> *"Two of the four members of staff working that night were agency workers Mr Okoli and a HCA … The HCA was also reported to have been sleeping for majority of the night."*

The panel concluded that your behaviour had brought the nursing profession into disrepute.

The panel noted that you were aware of the importance of taking observations, particularly in relation to two patients who had been exhibiting symptoms of concern and who you knew required monitoring. Despite that you put your needs above the needs of patients and breached the trust of your employer by being idle and/or sleeping for a substantial amount of your shift. You also took advantage of your employer by defrauding it and claiming dishonestly for time you had either not been carrying out your duties or not been in attendance, for your own financial gain. The panel determined that your misconduct breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. Further, in relation to limb d, the panel was easily persuaded that this limb was engaged in your case.

Regarding insight, the panel acknowledged your admissions to the charges at the start of this hearing and your apology by way of your recent reflective piece. It recognised that you have now expressed remorse and demonstrated some insight into how your conduct had impacted your employer, your colleagues and the wider nursing profession. However, the panel was of the view that your admissions had come at a very late stage. It noted that your admission came only after disclosure to you of the overwhelming evidence in the form of the CCTV footage that clearly shows you idle and/or sleeping in the social space for much of your shift, together with the key fob data. The panel had regard to your first statement to your employer in which you denied the concerns raised:

> *'I find this complaint unbelievable as could a nurse really be asleep for 4 hours then approximately 3 hours on a ward with none of the other staff taking any action? So, in answer to points 1 and 2, no I was not asleep and actually did not have a break that night.*
>
> *In response to point 3, it is unclear what is meant by detailed as that sounds subjective and as the patients were asleep for most of the night, I documented as appropriate. The allegation that I wrote activities that did not occur is untrue.*
>
> *Lastly, it was agreed with … that I would be paid for the entire shift since I was contacted late however it is clear that I should have asked for written confirmation. With regards to leaving early, if you are aware of how shifts work, it is impossible to leave early and with handovers it is also highly unlikely to be able to leave on time. I have just checked the time sheet that I resent to … as the first had an error and it clearly states 19:00 - 07:30.'*

In addition, the panel found that your reflective piece did not go far enough to demonstrate sufficient insight or explanation of why you had chosen to act in a way that demonstrated such disregard to the trust of your employer, the needs of your patients, and your responsibilities as a registered nurse. The panel was also of the view that you had not provided any explanation of your dishonest conduct. The panel had regard to your protracted period of non-engagement with the NMC as your

regulator and the delayed offer to pay back your employer, which you had attempted only a few days before the start of this hearing. The panel noted that you have had since January 2023 to offer your employer reimbursement. The panel therefore concluded that your expressions of remorse and apology are diminished by this delay, and that this undermines any demonstration of insight.

Nevertheless, the panel considered that the misconduct in this case may be capable of being addressed. Therefore, the panel went on to carefully consider the evidence before it in determining whether you have taken steps to strengthen your practice. It considered the training you had undertaken just prior to the start of this hearing but noted that it too had come at a very late stage only days before. Furthermore, the panel noted that the training you have undertaken is not directly relevant to the concerns found proved, and that the specific issues of concern identified remain insufficiently addressed.

The panel had regard to the time sheets it had been taken to by Mr Oyegoke as evidence of your good practice. These had contained feedback on your practice in relation to those specific shifts. However, the panel noted that, in relation to the shift of 18 and19 January 2023, your practice is also rated as excellent by Witness 5 who accepted they had not observed you during the shift. The panel was of the view that this undermines the weight which can be attached to the entirety of this evidence.

The panel noted that, although your conduct is remediable you were not able to provide any evidence or explanation as to why you acted in this way at the time of the incidents, other than that the ward was quiet and that no issues had been raised to you by other members of staff. [PRIVATE].

The panel concluded that there remains a risk of repetition due to your very limited insight, insufficient reflection, and the lack of any meaningful steps taken to address the underlying reasons for your misconduct. In these circumstances, the panel finds that your misconduct is likely to be repeated and that you continue to present a risk to public safety.

The panel determined that your conduct undermined the standards of the nursing profession and therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel determined that, in this case, a finding of impairment is also required on public interest grounds. The panel concluded that the confidence of the public in the profession, fully appraised of the facts of the case, would be undermined if a finding of current impairment were not made.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired and that you are not able to practise kindly, safely and professionally as a nurse.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of one year with a review. The effect of this order is that the NMC register will show that your registration has been suspended.
In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel did not receive any oral evidence at this stage.
The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Stevens submitted that the NMC's position on sanction is for a strike-off order to be made. It was her submission that this would be the most appropriate and proportionate sanction.

Ms Stevens referred the panel to NMC guidance 'Factors to consider before deciding on sanctions SAN-1.'

Ms Stevens took the panel through the aggravating factors that she submitted were appropriate in this case which are:

a. Personal financial gain;
b. Attempt to conceal that you worked shorter hours than you did by submitting an inaccurate timesheet;
c. Deliberate act;
d. Abuse of power;
e. Serious risk of harm;
f. Lack of cooperation with local investigation and the NMC; and
g. Insufficient insight.

In relation to the aggravating factors listed above, Ms Stevens submitted that you gained £30 from your conduct along with the money from the hours that you were inappropriately sleeping on shift. She submitted that your initial response to the Trust was an assertion that you had been aware and alert while on your shift and that you had attempted to conceal you worked shorter hours than you did by submitting an inaccurate timesheet. She further submitted that your act was deliberate, premeditated and that you had been unable to explain your misconduct, including your dishonesty and why you did not conduct any observations.

Ms Stevens also submitted that there has been no sufficient insight into your misconduct. She submitted that you purposefully placed yourself in the lounge area of the Ward once you saw that the patients were asleep and therefore assumed, wrongly to the risk of these patients, that they would not require assistance and you did not complete your observations. She also submitted that you abused the trust put in you by being the only nurse in charge during the time of your shift and left the HCAs to be responsible for managing patient risk and alert you to any issues.

Ms Stevens submitted that you were aware that, as the person in charge, the HCAs would not feel comfortable in challenging you for sleeping. She submitted that by doing so you abused your power and demonstrated disregard towards nursing standards, your colleagues and the nursing profession.

Ms Stevens submitted that your conduct exposed patients, especially two patients who had complained of concerning symptoms, to a risk of harm and left less qualified staff in a compromising position. She submitted that when initially asked about the incident by your employer you denied it and that by not engaging positively with your employer you failed in your duty of candour. She also submitted that you only began to engage with the NMC as your regulator in the last couple of months, and attempted to remediate with your employer in the last few weeks.

Ms Stevens next took the panel through the mitigating factors that she submitted were appropriate in this case which are:

a. Isolated incident;
b. No previous regulatory concerns with your practice;
c. No actual harm caused to patients on 18 and 19 January 2023; and
d. Positive references and testimonials.

In relation to the mitigating factors listed above, Ms Stevens submitted that your conduct on 18 and 19 January 2023 was an isolated incident and that you had no previous concerns raised either before or after. She submitted that no actual harm was caused to patients and your testimonials and positive references reflected on your excellent performance otherwise.

Ms Stevens referred the panel to the NMC Sanction Guidance SAN-3a and submitted that taking no further action would be inappropriate in this case as the misconduct found proved is serious. She submitted that this would not sufficiently protect the public or maintain public confidence and that since the panel has found the misconduct had not been remedied, there lies a risk of repetition.

Ms Stevens referred the panel to the NMC Sanction Guidance SAN-3b and submitted that a caution order would only be appropriate where the panel has decided that there is no risk to the public. The panel has found that you have placed your own needs above those of the patients and provided no support for staff members while on shift which put the patients and staff at a risk of harm. She submitted that the panel has determined that your actions demonstrated a disregard for the fundamental standards of a registered nurse and therefore, a caution order would not be appropriate in this case. She further submitted that a caution order would not mark the seriousness of the misconduct and would be insufficient to maintain the standards of the profession and public confidence.

Ms Stevens referred the panel to NMC Sanctions Guidance SAN-3c which states:

> *'Conditions can be put in place that will be sufficient to protect patients or service users, and if necessary, address any concerns about public confidence or proper professional standards and conduct.*
>
> *Conditions may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):*
>
> > *• no evidence of harmful deep-seated personality or attitudinal problems*
> > *• identifiable areas of the nurse, midwife or nursing associate's practice in need of assessment and / or retraining*
> > *• no evidence of general incompetence*
> > *• potential and willingness to respond positively to retraining*
> > *• the nurse, midwife or nursing associate has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision*
> > *• patients will not be put in danger either directly or indirectly as a result of the conditions*
> > *• the conditions will protect patients during the period they are in force*
> > *• conditions can be created that can be monitored and assessed.'*

Ms Stevens submitted that your misconduct in this case indicates a harmful deep-seated attitudinal or personality problem. She submitted that Charges 1d, 2 and 3 are attitudinal in nature and that there are no practical conditions that would sufficiently protect the public and maintain confidence. She submitted that it would be extremely difficult to create measurable conditions to allow an objective assessment of whether your behaviour meets the required standards expected of a registered nurse.

Ms Stevens next took the panel through the NMC Sanctions Guidance SAN-3d which states that a suspension order may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- *'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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*
- *…*
- *…'*

Ms Stevens submitted that a suspension order is neither appropriate nor proportionate in your case. She submitted that only two factors within this list are relevant in that this was a single instance of misconduct, and that there's been no repetition of the behaviour since the incident. She invited the panel to consider your attitudinal failing and further submitted that your expressions of remorse and apology are diminished by your delay in making reparations with your employer and [PRIVATE].

Ms Stevens further submitted that the panel previously determined that there remains a high risk of repetition due to your limited insight, lack of any meaningful steps taken to address the underlying reasons of your misconduct and insufficient reflection. She submitted that therefore you continue to present a risk to public safety.

Ms Stevens then took the panel through the NMC Sanctions Guidance (SAN-3e) with regard to strike-off and submitted that your misconduct is fundamentally incompatible with being a nurse. She submitted that your failures in this case demonstrated a disregard for the trust of your employer, the needs of your patients and your responsibilities as a nurse. She submitted that your conduct raises a fundamental question about your professionalism since, as an experienced nurse of 11 years you are very much aware of the importance of being honest, alert on shift and ensuring you are on time for work. Ms Stevens submitted that public confidence in nursing professionals cannot be maintained if you are not removed from the register.

Ms Stevens next took the panel through the key considerations given under NMC Sanctions Guidance SAN-3e:

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

Ms Stevens submitted that the regulatory concerns in this case do breach the fundamental tenets of the Code as set out by the panel in its determination and that this raises fundamental questions about your professionalism. She further submitted that a striking off order is the only sanction which will be sufficient to protect patients, members of the public and maintain professional standards.

Ms Stevens submitted that for all these reasons an order for strike-off is the only order that will meet the public interest of maintaining public confidence in the profession and uphold proper professional standards by declaring that your behaviour was unacceptable for a registered professional. She submitted that the NMC therefore invites the panel to find that a striking off order is the most appropriate and proportionate order in this case.

Mr Oyegoke submitted that every case at the sanction stage must be carefully considered in line with the facts admitted, evidence given and submissions made. He referred the panel to NMC Sanction Guidance SAN 1, SAN 3b and SAN 3e and submitted that while deciding on sanction the panel should consider all the available sanctions before it in ascending order, before reaching its decision.

Mr Oyegoke took the panel through the mitigating factors he submitted are appropriate in this case:

a. one off incident;
b. no repetition of conduct before since the incident; and
c. no risk of harm to any patient.

Mr Oyegoke submitted that in your 11 years of practising as a registered nurse, your conduct on 18 and 19 January 2023 was a one-off incident and that there had been no other concerns about your practice. He submitted that you have reflected on your conduct and received excellent testimonials and character references. You do not pose any risk of repetition or risk of harm to patients or your colleagues. He submitted that the panel has deemed your actions are remediable and that you had developed some insight since the incident. Mr Oyegoke submitted that the panel should choose the least restrictive sanction necessary.

Mr Oyegoke next took the panel through the different available sanctions. He accepted that no further action is not appropriate in this case, given that it would not protect the public from harm and that public confidence in the profession will not be maintained if no further action is taken. He referred the panel to the principle of proportionality and submitted that the panel must balance your right to continue to practise as a registered nurse against the need to protect the public. He further referred the panel to the case of *Lusinga v Nursing And Midwifery Council [2017] EWHC 1458 (Admin)* At para 102:

> ‘*This is in my judgment par excellence a case where the public interest requires the safe return to practice of a competent nurse.’*

Mr Oyegoke submitted that a caution order in this case would be the least restrictive and most appropriate sanction. He submitted that a caution order will impose the necessary sanction on you and that it would require you to disclose the order to your employer. He submitted that that order would satisfy the public interest in this case and protect the public from any risk of harm.

Mr Oyegoke submitted that if the panel is not minded to impose a caution order, a conditions of practice order could be placed on your registration which would put the necessary conditions on you to mitigate the risk of harm to the public. He submitted that since your misconduct relates to dishonesty, a failure to perform clinical observations and handover, the panel can impose conditions to help you remediate the concerns addressed.

Mr Oyegoke next addressed the available sanction of a suspension order and submitted that the panel could consider a short period of suspension. He submitted that a period between three to six months might be appropriate, along with instructions on how you could assist a future panel when the order is reviewed before its expiry. He submitted that a suspension order would constitute the maximum sanction which would be appropriate in your case. It would be sufficient to maintain public confidence in the nursing profession and protect the public from any risk of harm or repetition. Mr Oyegoke referred the panel to its determination on impairment and misconduct. He submitted that the panel has acknowledged that you have insight that is diminished as a result of your delayed reflection and late offer to reimburse your employer. However, he submitted that the panel has identified that your insight and failings can be remedied with further reflection on your conduct.

Mr Oyegoke submitted that a suspension order will give you time to rectify and remedy your conduct and allow you to convince a future reviewing panel about your further developed insight into why you behaved in the way you did.

Mr Oyegoke referred the panel to the case of *Giele v GMC* [2005] EWHC 2143 Admin where Mr Justice Collins stated:

‘I do not doubt that the maintenance of public confidence in the profession must outweigh the interests of the individual doctor, but that confidence will surely be maintained by imposing such a sanction as is, in all the circumstances, appropriate. Thus, in considering the maintenance of confidence, the existence of a public interest in not ending the career of a competent doctor will play a part.’

Mr Oyegoke further referred the panel to the case of *Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin):*

‘A [registrant] found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A [registrant] who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.’

Mr Oyegoke submitted that in order to protect the public from any future risk of harm and in the wider public interest, you should be given a chance to continue to practise or at least be presented an opportunity to further reflect and develop insight. He submitted that if you are struck off from the register, it would be a disservice to the public, as you have worked as a registered nurse for the past 11 years with this incident being a one-off. He further submitted that a strike-off order would be disproportionate and that the public would benefit from the continued registration of a competent nurse and, given you have gone through these rigorous regulatory proceedings, that this would satisfy the public interest.

Mr Oyegoke also submitted that your good character must be taken into consideration at all stages most especially at the sanction stage. He submitted that although dishonesty is a serious allegation, you have received excellent character references and testimonials from your colleagues and employer. He further submitted that you have attended the hearing in its entirety and engaged with the

NMC consistently in the last few months. Your current attendance should be taken into consideration when deciding on a suitable sanction.

Decision and reasons on sanction

The panel accepted the advice of the legal assessor. He advised the panel that the purpose of the imposition of a sanction is not to punish, but it is to adequately address any public protection or public interest concerns identified. He reminded the panel that not all instances of dishonesty are of equal seriousness, and that not all findings of dishonesty would indicate the imposition of a striking-off order. He advised the panel to consider all the available sanctions before it in ascending order, in reaching its decision.

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 concluded that the following aggravating features are engaged in your case:

- personal financial gain
- deliberate acts
- insufficient insight
- setting a poor example to junior colleagues as the person in charge
- abuse of the trust placed in you by your employer
- lack of cooperation in Trust investigation and the NMC
- as the only registered nurse present in the Ward of a forensic unit, your conduct exposed the patients and your colleagues to a high level of risk.

The panel accepted that this was a single shift and that there had been no repetition of your behaviour before or since. However, it was of the view that your behaviour nonetheless incorporated various forms of misconduct. It accepted that although your misconduct exposed patients and your colleagues to a risk of harm, no evidence of actual harm was found. It also had regard to the positive references and testimonials submitted and your admissions to the charges at the start of this hearing.

However, the panel was not of the view that the circumstances above constitute actual mitigating features and was unable to determine any mitigating features in this case. Nonetheless, the panel has given you limited credit for your late admissions to the allegations.

The panel before deciding on the most appropriate sanction in this case referred to the Guidance FTP-3a which deals with serious concerns which are more difficult to put right:

> *'Being directly responsible (such as through management of a service or setting) for exposing patients or service users to harm or neglect, especially where the evidence shows the nurse, midwife or nursing associate putting their own priorities, or those of the organisation they work for, before their professional duty to ensure patient safety and dignity.'*

The panel also referred to the Guidance FTP-3b which deals with serious concerns which could result in harm to patients if not put right:

> *'We wouldn't usually need to take regulatory action for isolated incidents of these failings unless the incident suggests that there may be an attitudinal issue such as displaying discriminatory views and behaviours. This may indicate a deep-seated problem even if there is only one reported incident. A pattern of incidents is usually more likely to show risk to patients or service users, requiring us to act.'*

The panel considered the above guidance and determined that although your misconduct included an act of dishonesty, it does not reach the highest level of

seriousness, in that the financial gain to you was a modest sum, as well as the fact that you were not absent from the unit once you arrived.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where:

> '*The case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'*

The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the risk of repetition and the public protection issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining as your misconduct deals with dishonesty and other harmful attitudinal concerns for which you have not yet gained sufficient insight or remedied.

The panel determined that your lack of insight with regard to your dishonesty undermines the panel's confidence in your compliance with any conditions imposed.

The panel was of the view that the clinical failings, to provide a written handover and make observations, were caused by your harmful attitude. As an experienced nurse, you would have been aware that your choices would expose your patients and colleagues to a risk of harm. It noted that training cannot change your attitude and behaviour and that you have not demonstrated any insight into why you did what you did. The panel concluded that a conditions of practice order would therefore not protect the public.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of the case and would not satisfy the public interest.

The panel then went on to consider whether a suspension order would be the 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 considered that the first and third bullet points above are engaged in your case. However, the panel was of the view that there is evidence of a harmful attitudinal problem and has found that there is risk of you repeating your behaviour. Nevertheless, it is satisfied that there is also evidence of the beginnings of insight and that therefore your misconduct is still remediable. The panel did not consider your misconduct to be fundamentally incompatible with remaining on the register.

The panel did consider very carefully whether a striking-off order would be proportionate and necessary in your case. In making its decision, the panel bore in mind the submissions of Ms Stevens in relation to sanction and that the NMC was seeking a strike-off order. However, taking account of all the information before it, including your engagement with your regulator (albeit delayed), your 11 years practise as a nurse with no other regulatory concerns, your positive testimonials and references (some of whom were evidently aware of the allegations), your presence at this hearing, your eventual admission to all the charges, your beginnings of insight and attempts at remediation (albeit delayed), the panel concluded that a striking-off order would be disproportionate at the present time. The panel determined that although it had identified a variety of misconduct within the incident of this case, it was appropriate to give you further time to remediate. A suspension order would be sufficient to protect the public from any future risk of harm, as well as ensuring public confidence in the profession is maintained.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel considered that a striking-off order is not the only sanction sufficient *'to protect patients, members of the public, or maintain professional standards*.' The panel was of the view that it would be unduly punitive in your case to impose a striking-off order.

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

The panel determined that a suspension order for the maximum period of one year was appropriate in this case to mark the seriousness of the misconduct.

The panel noted the hardship such a suspension order will inevitably cause you and your family. However, this is outweighed by the public interest in this case.

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

In the panel's view, a future panel reviewing this case would be assisted by:

- An up-to-date reflective piece from you, specifically addressing the concerns identified, including your dishonesty, the importance of putting your patients' needs above your own and showing an understanding of the risks to patients and your colleagues;
- Full explanation as to why you behaved in the way you did;
- Recent character references and testimonials relevant to the concerns addressed;
- Sufficient evidence of insight into how you will ensure your behaviour is not repeated in the future; and
- Continued engagement with the NMC and attendance at any review.

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Stevens. She submitted that an interim suspension order for a period of 18 months to cover any relevant appeal period before the substantive suspension order takes place is required given the seriousness of the facts admitted in your case. She submitted that this is necessary because the panel has found a variety of misconduct and harmful attitudinal issues and there remains a risk of repetition. She submitted that this interim order would be necessary on both public protection and public interest grounds.

The panel also took into account the submissions made by Mr Oyegoke who opposed the application. He submitted that you have been practising for two and a half years since the incident and that there had been no repetition of your conduct. Mr Oyegoke reiterated that you pose no risk to patients and that the public interest lay in having a competent nurse able to practise. Mr Oyegoke also submitted that it would be against your interests to impose an interim order.

The panel accepted the advice of the legal assessor.

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 admitted and its own reasons set out in its decision for the substantive order in reaching this decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. No workable and practical conditions could be placed which could address the public protection issues in your case. The panel therefore imposed an interim suspension order for a period of 18 months to cover any relevant appeal period and allow any appeal, if made, to conclude.

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

That concludes this determination.