

**Nursing and Midwifery Council**  
**Fitness to Practise Committee**  
**Substantive Hearing**  
**29 July – 31 July 2019**

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

<b>Name of registrant:</b>	Miss Lindsey Churchill
<b>NMC PIN:</b>	12J1231E
<b>Part(s) of the register:</b>	Sub part 1 RNA: Adult Nurse (2013)
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Anthony Kanutin (Chair, Lay member) Kathryn Bergmanski (Registrant member) Christine Moody (Lay member)
<b>Legal Assessor:</b>	Jayne Salt
<b>Panel Secretary:</b>	Charlie Russell
<b>Miss Churchill:</b>	Neither present, nor represented
<b>Nursing and Midwifery Council:</b>	Represented by Farzana Iqbal, Case Presenter
<b>Facts proved:</b>	1, 2, 3
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off
<b>Interim Order:</b>	Suspension order (18 months)

## **Details of charge**

That you, a registered nurse, whilst employed by Yew Tree Nursing Home:

1. On 10 May 2018 failed to administer prescribed medication to 1 or more residents at around 10pm (***Found proved***)
2. On or around 10 May 2018 recorded that you had administered medication to 1 or more residents at around 10pm when you knew that you had not (***Found proved***)
3. Were dishonest in relation to charge 2 above in that you deliberately sought to mislead anyone reading the Mar charts into believing that you had administered the required medication (***Found proved***)

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

## **Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Churchill was not in attendance and that written notice of this hearing had been sent to Miss Churchill's registered address by recorded delivery and by first class post on 25 June 2019.

The panel took into account that the notice letter provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Miss Churchill's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

Ms Iqbal submitted that the NMC had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (“the Rules”).

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Miss Churchill has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

### **Decision on proceeding in the absence of Miss Churchill**

The panel next considered whether it should proceed in the absence of Miss Churchill.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
  - (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
  - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
  - (c) may adjourn the hearing and issue directions.

Ms Iqbal directed the panel to a proceeding in absence bundle which included a number of communications, including emails and telephone notes, between Miss Churchill and her NMC Case Officer dated from 5 June 2019 to 15 July 2019. A telephone note dated 5 June 2019 reads:

“She said that she does not want to attend a hearing. She said that she does not like talking over the phone...She said that she wants it be over with.”

An email from Miss Churchill dated 1 July 2019 reads:

“I send my appologies [*sic*] for not being able to attend the hearing or meeting that is being held with my conduct, I would take this opportunity to thank you all for being able to read this, I was not able to attend due to major illness...”

Ms Iqbal submitted that Miss Churchill has indicated throughout her communications with the NMC that she is aware of today’s hearing, and has voluntarily absented herself. Ms Iqbal drew the panel’s attention to an email from Miss Churchill dated 15 July 2019, confirming that she was not attending today’s hearing and wished the proceedings to continue in her absence. Ms Iqbal submitted that there is no reason to suppose that an adjournment would secure her attendance. Ms Iqbal reminded the panel that two witnesses are due to attend to give evidence and any further delays will inconvenience these witnesses. She informed the panel that Miss Churchill has provided written representations in her absence. Ms Iqbal submitted that the allegations against Miss Churchill are serious, and there is a strong public interest in these proceedings being dealt with expeditiously.

The panel accepted the advice of the legal assessor, who referred the panel to the case of *General Medical Council v Adeogba* [2016] EWCA Civ 162 (Admin).

The panel decided to proceed in the absence of Miss Churchill. It had regard to the overall interests of justice and fairness to all parties. It noted:

- no application for an adjournment has been made by Miss Churchill;

- Miss Churchill has provided confirmation that she is content for the hearing of her case to proceed in her absence;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- two witnesses are due to attend to give live evidence;
- not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- the charges relate to events that occurred in May 2018;
- further delay may have an adverse effect on the ability of witnesses accurately to recall events;
- these are serious allegations;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Churchill in proceeding in her absence. She will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Churchill's decision to absent herself from the hearing, waive her rights to attend and/or be represented and to not provide evidence or make submissions on her own behalf.

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

## **Background**

On 26 June 2018 the NMC received a referral from the Home Manager at Yew Tree Nursing Home (“the Home”). Miss Churchill commenced employment with the Home on 16 January 2018 as a general nurse. She covered the night shifts and part of her role was that when she was on shift, she was the nurse in charge. On 11 May 2018 the Home Manager carried out a random spot check of the medications trolley and found medication for 10 residents due to be administered at around 10pm on 10 May 2018, still in unopened blister packets. This indicated that the medication had not been administered when it should have been. However, the relevant MAR charts had been signed to state that medication had been administered.

Miss Churchill was the nurse in charge of the nightshift on 10 May 2018. It is alleged that she failed to administer medication to 10 residents, but recorded in the Medication Administration Records (“MARs”) that the medication had been administered.

On 11 May 2018, a meeting took place between Miss Churchill and her manager. Miss Churchill is alleged to have denied the allegation and stated that she had administered the medication but that she had mistakenly used the medication from 8 May 2018. Miss Churchill stated that she tried to contact her manager in relation to this error but was unable to establish contact.

A formal investigatory meeting was held on 23 May 2018. Miss Churchill was dismissed from her role at the Home.

## **Error with hearing bundle documents**

The panel was invited by Ms Iqbal to read a number of bundles before hearing from the witnesses. The bundles were numbered by the panel as follows:

- Proceeding in Absence Summary: C1;
- Hearing Document Bundle: C2;
- Witness Statement Bundle: C3;
- Registrant's response Bundle C4.

The panel noted during its reading of the bundles that they contained irrelevant and potentially prejudicial material as follows: Bundle C1 page 4 contained a paragraph in an email from the registrant that had been redacted when the same document appeared in another bundle, namely Bundle C4, last page (page unnumbered), but had not been redacted from the same document in Bundle C1. Bundle C2 page 55 referred to an incident on a date prior to the incident in question.

When these two items were drawn to the attention of Ms Iqbal, she confirmed that she had given instructions for redactions to be applied, but her instructions had not been followed. She invited the panel to disregard page 55 of Bundle C2 and paragraph 5 of page 4 of Bundle C1.

The panel sought advice from the legal assessor who advised that *Porter v Magill* [2002] 2AC357 established that the panel should consider whether a fair and impartial member of the public would consider it fair to continue, and in considering this whether as a professional tribunal the panel could put the material out of its mind in order to continue with the hearing.

The panel decided that as an experienced, professional tribunal it was able to put out of its mind the material containing matters that it should not be aware of or concerned with as detailed above.

## **Findings on facts and reasons**

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Ms Iqbal, on behalf of the NMC and written representations made by Miss Churchill.

The panel accepted the advice of the legal assessor, which included directions on dishonesty and the burden and standard of proof.

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

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

The panel heard oral evidence from two witnesses tendered on behalf of the NMC.

Witnesses called on behalf of the NMC were:

Ms 1 – Home Manager;

Ms 2 – Registered Nurse.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

The panel found Ms 1 to be clear and credible. She answered panel questions to the best of her knowledge and ability and was honest about what she did and did not know. It had no reason to doubt Ms 1's honesty or credibility.



The panel found Ms 2 to be a reliable and straightforward witness. It found Ms 2 to be particularly helpful regarding policies and working practices at the Home. Ms 2 did not have significant contact with Miss Churchill, but was able to describe her account of her own actions to the panel in a professional manner.

The panel considered each charge and made the following findings:

**Charge 1:**

1. On 10 May 2018 failed to administer prescribed medication to 1 or more residents at around 10pm

**This charge is found proved.**

In reaching this decision, the panel took into account all the information before it. While it noted that Miss Churchill has denied the allegation that she failed to administer prescribed medication, the panel has heard and seen evidence to suggest that the medication was left unopened in the blister packs on 10 May 2018.

Miss Churchill's written explanation asserted that she had given the medication from 8 May 2018 that was unopened in the blister pack. She stated that this must have been an error by another nurse, and that she mistakenly used that medication on the night of 10 May 2018. She stated in an email dated 1 July 2019:

"I ended up popping the wrong day medication that was left the night I was not on shift"

The panel heard written and oral evidence that the nurse on duty on 8 May 2018, was Ms 2. Ms 2 clearly stated in written and oral evidence that she had administered the medication correctly on 8 May 2018. The panel took into account that Miss Churchill

was the nurse on duty on the night of 9 May 2018 and would therefore have been aware of a medication error, made on 8 May 2018, had it occurred.

The panel bore in mind the oral evidence of Ms 1 and Ms 2, who both independently noticed an issue with the medication being in unopened blister packs. Ms 2, in her oral evidence, explained to the panel that she flagged the incident to Ms 1 when she noticed that 'something was not right'. The panel considered that there was a clear medication policy at the Home, which was enacted by Ms 2 and supported by Ms 1. The panel considered it extremely unlikely that Ms 2 would have brought the matter of the unopened medications for 10 May 2018 to the attention of Ms 1 had she been the one who had not administered the medication on 8 May 2018. The panel, having found Ms 2 to be an honest, credible and reliable witness and preferred her evidence to that of Miss Churchill.

Taking all of the above into account, the panel found it more likely than not that Miss Churchill did fail to administer the prescribed medication. The panel therefore found the above charge proved.

**Charge 2:**

2. On or around 10 May 2018 recorded that you had administered medication to 1 or more residents at around 10pm when you knew that you had not.

**This charge is found proved.**

The panel noted that it did not have the benefit of oral evidence from Miss Churchill as part of this hearing, or of any eye witness accounts to the alleged incidents. However, it did have a written response from Miss Churchill, (who asserts that she used the wrong date on the blister packs) as well as Ms 1's account of how Miss Churchill responded when confronted with the allegations at a meeting on 11 May 2018. From this

information, the panel considered that it was able to make inferences as to Miss Churchill's knowledge and belief as to her actions.

The panel noted that Miss Churchill had the opportunity to admit any error that may have occurred in recording the administration of medication either during the handover on the morning of 11 May 2018 or when Ms 1 confronted her once she [Ms 1] had discovered the un-dispensed medication on the trolley. While the panel acknowledged Miss Churchill's assertion that she had tried to establish contact with Ms 1 to report the medication errors, it saw no evidence to support this. Further, the panel heard evidence from Ms 1, who confirmed that there was a staff communications book and post box, which could have been used to record any attempts made by Miss Churchill to report an error. In oral evidence, Ms 1 also stated that there were no missed calls, no written notes and no messages from other staff.

The panel was of the opinion that Miss Churchill had signed for the administration of medications as part of the evening drug round on 10 May 2018, as indicated in the MAR charts, and that these had not in fact been administered, nor were there any records on the relevant MAR charts to indicate that such medications had been refused by residents or had not in fact been administered.

The panel therefore find this charge proved.

**Charge 3:**

3. Were dishonest in relation to charge 2 above in that you deliberately sought to mislead anyone reading the Mar charts into believing that you had administered the required medication

**This charge is found proved.**

The panel noted that it had found charge 2 proved.

When determining this charge, the panel considered the judgment of Lord Hughes in the case of *Ivey*, which states:

“[T]he fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts [...] When once his actual state of mind as to the knowledge or belief as to the facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

Ms 1, in her oral evidence, told the panel that some of the residents at the Home were ‘highly vulnerable’ and could not communicate verbally. Ms 2 stated that the three residents, whose MAR charts she was concerned about, lacked capacity to make decisions about their medication. The panel considered that the MAR chart used was a vital medical record and that Miss Churchill, as a registered nurse, should have known and understood the potential impact of entering incorrect information.

There is no available evidence to enable the panel to make a finding as to when Miss Churchill made the relevant entries into the MAR chart. They could have been made before, during or at the conclusion of her medication round. Consequently the panel makes no finding as to exactly when Miss Churchill recorded in the MAR chart that she had administered the medication. However, it determined that at no time did Miss Churchill correct the entries that she knew were wrong. Moreover she did not alert staff at the Home to the fact that the entries were incorrect, by utilising the communications book, post box, during handover or any other means.

The panel went on to consider whether ordinary decent people would consider Miss Churchill’s actions to be dishonest. The panel noted that, in the absence of any reasonable explanation, ordinary decent people would not expect registered nurses to

enter incorrect information on important medical records, such as MAR charts. By claiming that Miss Churchill had administered medication to 10 residents, when she knew she had not, the panel considered that ordinary decent people would not find Miss Churchill's conduct in this regard to be safe or trustworthy. The panel concluded that such people would consider Miss Churchill's conduct to be dishonest, in that she deliberately sought to mislead anyone reading the MAR chart into believing that she had administered the required medication, when she knew she had not.

For these reasons, the panel finds charge 3 proved.

## Submission on misconduct and impairment

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

Ms Iqbal outlined the two stage approach the panel should take when considering misconduct and impairment and submitted that there is no burden or standard of proof at this stage. She submitted that whilst there is no definition of misconduct, it has been described as conduct unworthy of a nurse or conduct falling short of what would be proper in the circumstances. Ms Iqbal submitted that to amount to misconduct, the matters found proved should be serious, and it is clear that the allegations found proved in this case were serious.

Ms Iqbal highlighted the aspects of *The Code: Professional standards of practice and behaviour for nurses and midwives (2015)* ("the Code"), which in the NMC's view were breached in relation to the matters found proved. Ms Iqbal submitted that there were numerous breaches in this case. She submitted that whilst not all breaches of the Code amount to misconduct, the breaches in this case represent serious misconduct.

Ms Iqbal then 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. In this regard, Ms Iqbal referred the panel to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

Ms Iqbal submitted that the panel should take into account the level of insight and remorse demonstrated by Miss Churchill, the risk of repetition, whether the misconduct

was remediable and whether it had been remedied. Ms Iqbal submitted that Miss Churchill's misconduct raises both clinical and dishonesty concerns. She added that while clinical errors are remediable, dishonesty is inherently difficult, but not impossible to remediate. However in this case, the panel has not been presented with any evidence of insight, remorse or remediation from Miss Churchill. Ms Iqbal reminded the panel that Miss Churchill denies the allegations found proved, and that she sought to blame a fellow registered nurse for her actions.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments, including: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Cheatle v GMC* [2009] EWHC 645, *R (Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245, and *Grant*.

### **Decision on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. In reaching its decision, the panel had regard to the public interest, accepted that there was no burden or standard of proof at this stage, and exercised its own professional judgement.

The panel bore in mind the words of Lord Clyde in the case of (*Roylance*) which established that:

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required by a [nursing] practitioner in the particular circumstances...The professional misconduct must be serious.”*

The panel was of the view that Miss Churchill's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to breaches 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

### **4 Act in the best interests of people at all times**

### **8 Work co-operatively**

To achieve this, you must:

8.2 maintain effective communication with colleagues

8.6 share information to identify and reduce risk

### **10 Keep clear and accurate records relevant to your practice**

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements



## **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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel concluded that Miss Churchill's dishonesty, which involved falsifying vital medical records and attempting to deflect her behaviour on to another registered nurse is very serious and amounts to misconduct.

The panel found that Miss Churchill's conduct was such that she had deliberately intended to create a misleading impression that residents had been given their medication when they had not. This had potentially put residents at a significant risk of harm. The panel was in no doubt that Miss Churchill's actions would be regarded as deplorable by fellow nurses. The panel considered that other nurses would expect Miss Churchill to act with honesty and integrity, especially when she was in a position of trust as the nurse in charge of the nightshift of 10 May 2018.

For these reasons, the panel finds that Miss Churchill's actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Decision on impairment**

The panel next went on to decide if, as a result of her misconduct, Miss Churchill's fitness to practise is currently impaired.

The panel considered the principles set out by Mr Justice Silber in the case of (*Cohen*). Accordingly the panel had regard to Miss Churchill's actions in the light of all relevant

factors. It considered whether her deficiencies were remediable, whether they had been remedied and whether her misconduct was likely to be repeated or not.

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 judgement of Mrs Justice Cox in the case of *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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the [nurse'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 finds that all of the above limbs are engaged in this case.

The panel considered Miss Churchill's insight into her actions. It took into account that some of the residents at the Home were highly vulnerable, and could not communicate verbally. Based on the evidence before it, the panel determined that Miss Churchill is not cognisant of the impact that her actions may have had on residents at the Home. It considered that, in any event, Miss Churchill should have been able to demonstrate some insight as to the potential implications of maladministration of prescribed medication. However, the panel has seen no evidence of any insight, remorse or remediation from Miss Churchill, with regards to either her dishonesty or clinical errors. Rather, the panel has heard evidence that Miss Churchill deliberately sought to blame another registered nurse for her actions in an attempt to cover up her failings.

In the panel's judgement Miss Churchill had exposed residents to a risk of harm. Her actions also placed her former colleague, Ms 2, at risk. The panel was concerned that Miss Churchill has failed to provide the panel with any evidence to suggest that she is aware of her failings or has attempted to or succeeded in remediating her deficiencies. Further, the panel noted that Miss Churchill's dishonesty was not isolated. While it occurred on a single nightshift on 10 May 2018, her actions involved a pattern of falsifying records for 10 residents, depriving them of their prescribed medication.

The panel also had sight of an additional bundle, which included panel decisions from a previous NMC case. At a hearing dated 8 August 2017, a panel found that Miss Churchill had acted dishonestly. At a review hearing dated 24 November 2017, in which Miss Churchill attended and gave sworn evidence, that panel determined that Miss Churchill was able to:

“demonstrate that you [she] well understand the fundamental importance of a nurse acting with honesty and integrity at all times.”

This panel noted that the events which gave rise to the current charges, occurred some eight months after a previous panel determined that Miss Churchill had remediated her misconduct. This panel had serious concerns that there is a high risk of repetition of Miss Churchill repeating her misconduct and that she is liable in the future to act so as to put a patient or patients at unwarranted risk of harm and is liable in the future to breach one or more of the fundamental tenets of the profession. Therefore the panel has found current impairment on the grounds of public protection.

The panel went on to consider whether a finding of impairment is also necessary to uphold proper professional standards and public confidence in the profession. The panel determined that a finding of dishonesty in a clinical setting, involving an attempt to deflect Miss Churchill's failings on to another registered nurse is particularly serious. Informed members of the public with knowledge of the circumstances of this case would be alarmed if a finding of impairment were not made and public confidence would be undermined as a result. The panel considered that the reputation of the nursing

profession would be undermined if a finding of current impairment were not made against Miss Churchill's fitness to practise, given the seriousness of her clinical errors and the associated dishonest misconduct. The panel therefore decided that, in this case, a finding of impairment on public interest grounds is also required.

Having regard to all of the above, the panel has decided that Miss Churchill's fitness to practise is currently impaired by reason of her misconduct.

### **Decision on sanction**

Having determined that Miss Churchill's fitness to practise is currently impaired by reason of her misconduct, the panel considered what sanction, if any, should be imposed on her registration. In so doing, the panel acknowledged its obligation to uphold the public interest. This includes the protection of patients and members of the public, the maintenance of public confidence in the profession and the NMC as a regulator, and the need to declare and uphold proper standards of conduct and behaviour.

The panel heard submissions from Ms Iqbal, who outlined the aggravating factors for the panel. She added that it is the NMC's position that there are no identifiable mitigating factors in this case. Ms Iqbal referred the panel to the Sanctions Guidance ("SG") and submitted that the dishonesty found proved is at the higher end of the spectrum, but that ultimately sanction is a matter for the panel's independent judgment. Ms Iqbal submitted that dishonesty undermines the trust the public place in the profession as honesty, integrity and trustworthiness are considered to be the bedrock of any nurse's practice.

Ms Iqbal reminded the panel of its earlier finding that there is a risk of repetition of placing patients at unwarranted risk of harm and submitted that it will be necessary to

take action to reflect this. Accordingly, she submitted that the seriousness of Miss Churchill's misconduct requires removal from the register and that a striking off order is necessary to maintain public confidence in the profession and the NMC. She added that it is the only sanction sufficient to protect the public interest as the seriousness of the case is incompatible with ongoing registration.

The panel accepted the advice of the legal assessor, who also referred the panel to the SG dealing with dishonesty.

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. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgment.

The panel first considered the aggravating and mitigating factors in this case, as follows:

The panel identified the following aggravating factors:

- This is Miss Churchill's second finding of dishonesty by the NMC;
- The dishonesty in this case was deliberate and directly related to clinical matters;
- Some of the residents involved were highly vulnerable with limited communication and capacity to make decisions about their care;
- Miss Churchill has demonstrated no insight, remorse or remediation and she sought to place blame on a fellow registered nurse;
- Miss Churchill repeated her actions for 10 residents and;
- The misconduct found proved relates to basic nursing practice.

The panel could not identify any mitigating factors in this case.

The panel then turned to the question of which sanction, if any, to impose. It bore in mind that it was required to impose the least restrictive sanction necessary to protect

the public and to maintain public confidence in the profession and the NMC as a regulator, balancing this against Miss Churchill's interests. The panel considered the sanctions available to it starting with the least restrictive.

The panel first considered taking no action. It had regard to its previous findings that Miss Churchill is not fit to practise unrestricted and represents a continuing risk to patients. To take no further action would be incompatible with those findings. The panel determined that it would be neither proportionate nor in the public interest to take no further action.

Next, the panel considered whether a caution order would be appropriate. The panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again'*. The panel considered that Miss Churchill's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case, lack of insight and the risk of repetition. For these reasons the panel concluded that a caution order would not be an appropriate sanction in this case.

The panel next considered whether it would be sufficient to impose a conditions of practice order. There was no evidence before the panel that Miss Churchill was willing to comply with conditions, remedy her failings and return to safe and effective practice. In the panel's judgement, it was not possible to formulate conditions which would address the serious concerns emanating from its finding of dishonesty. The panel therefore concluded that placing conditions on Miss Churchill's registration would not adequately address the seriousness of this case, protect the public nor address the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel had regard to the SG where it states:

“Key things to weigh up before imposing this order include:

- whether the seriousness of the case require temporary removal from the register?
- will a period of suspension be sufficient to protect patients, public confidence in nurses and midwives, or professional standards?
- 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 Miss Churchill’s actions had the potential to impact patient safety and to also implicate another registered nurse, Ms 2. The panel took account of the fact that Miss Churchill had previously received a suspension order from the NMC in November 2017 for dishonesty. This instance of misconduct occurred some eight months after a previous panel determined that Miss Churchill had remediated her dishonesty. It considered that Miss Churchill’s dishonesty, her continued lack of taking responsibility, lack of insight, remorse and remediation demonstrates harmful and deep-seated attitudinal problems. The panel determined that Miss Churchill’s misconduct, as highlighted by the facts found proved was a significant departure from the standards expected of a registered nurse. It concluded that the serious breaches of the fundamental tenets of the profession evidenced by Miss Churchill’s misconduct and her failure to learn from her previous regulatory finding are fundamentally incompatible with her name remaining on the register. The panel determined that a suspension order would therefore not be a sufficient, appropriate or a proportionate sanction to protect the public or satisfy the public interest considerations of this case.

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



“This sanction is likely to be appropriate when what the nurse or midwife has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:

- 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?”

Taking all of the above into account, the panel determined that the only appropriate and proportionate sanction is that of a striking-off order. The panel found that Miss Churchill’s actions could have caused actual harm to patients and her continued lack of insight means that there is a high risk that she may cause harm to patients in the future. Further, Miss Churchill’s repeated dishonesty and attempts to deflect responsibility on to others raises serious concerns about her professionalism. The panel found that a striking off order is the only order sufficient to protect the public, mark the severity of Miss Churchill’s misconduct and meet the public interest in declaring and upholding proper standards in the nursing profession and the public interest in maintaining public confidence in the nursing profession and the NMC as its regulator.

The panel directs that Miss Churchill’s name will be removed from the register and she may not apply for restoration before 5 years from the date that this decision has taken effect.

## **Determination on Interim Order**

Ms Iqbal submitted that an interim suspension order should be imposed on the basis of protection of the public and otherwise in the wider public interest. She submitted that the interim suspension order, which would take immediate effect, should be for a period of 18 months to cover the possibility of an appeal being lodged by Miss Churchill in the 28 day appeal period.

The panel accepted the advice of the legal assessor.

The panel considered the circumstances of the case and its decision for imposing a striking off order.

The panel had particular regard to its earlier finding that there remained a risk of repetition of Miss Churchill's misconduct. It also bore in mind the seriousness of the matters which it has found proved and concluded that in light of its earlier decisions on impairment and sanction, an interim order was necessary for the protection of the public and is otherwise in the public interest in order to uphold professional standards and maintain public confidence in the profession.

For the reasons already set out in detail in the decision on sanction, the panel considered that a workable interim conditions of practice order could not be formulated to protect the public pending any appeal. The panel therefore concluded that it was necessary for Miss Churchill's registration to be subject to an interim suspension order on the grounds of public protection and in the public interest. To do otherwise would be inconsistent with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.