

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

**Substantive Hearing  
30 June - 2 July 2021**

Nursing and Midwifery Council  
Virtual Hearing

**Name of registrant:** Francis Kwame Atando

**NMC PIN:** 97J0639E

**Part(s) of the register:** Registered Nurse – Sub Part 1  
Mental Health Nurse, level 1 – October 2000

**Area of registered address:** West Midlands

**Type of case:** Misconduct

**Panel members:** Andrew Gell (Chair, Lay member)  
Ross Cheape (Registrant member)  
Jayanti Durai (Lay member)

**Legal Assessor:** Juliet Gibbon

**Panel Secretary:** Xenia Menzl

**Nursing and Midwifery Council:** Represented by Tracey Brown, Case Presenter

**Mr Atando:** Not present and not represented in absence

**Facts proved:** **Charges 1 (in its entirety), 2, 3, 4 and 5**

**Fitness to practise:** **Impaired**

**Sanction:** **Striking-Off Order**

**Interim order:** **Interim Suspension Order, 18 Months**

## **Decision and reasons on service of Notice of Hearing**

The panel was informed at the start of this hearing that Mr Atando was not in attendance and that the Notice of Hearing letter had been sent to Mr Atando's registered email address on 24 May 2021.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates of the hearing and the fact that this would be a virtual hearing. Amongst other things, it also contained information about Mr Atando's right to attend, be represented and call evidence, as well as the panel's power to proceed in his absence.

Ms Brown, on behalf of the Nursing and Midwifery Council (NMC), submitted that it 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 Mr Atando had been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

## **Decision and reasons on proceeding in the absence of Mr Atando**

The panel next considered whether it should proceed in the absence of Mr Atando. It had regard to Rule 21 and heard the submissions of Ms Brown who invited the panel to continue in the absence of Mr Atando. She submitted that Mr Atando had voluntarily absented himself.

Ms Brown referred the panel to an email from Mr Atando, dated 24 June 2021, which stated:

*'I wish to inform you that I do not intend to attend the hearing scheduled for 30th June to 2nd July 2021.*

*I will appreciate what decision the panel will make however I am still pleading for my behaviour.'*

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Mr Atando. In reaching this decision, the panel has considered the submissions of Ms Brown, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Atando;
- Mr Atando has replied to the Notice of Hearing and confirmed he is not attending the hearing and will appreciate the decision the panel makes, thereby indicating that he is content for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- A witness has attended today to give live evidence; not proceeding may inconvenience the witness and their employer;
- The charges relate to events that occurred in 2019;

- Further delay may have an adverse effect on the ability of the witness accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mr Atando in proceeding in his absence. Although the evidence upon which the NMC relies has been sent to him at his registered address, he will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Atando's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not give oral evidence or make submissions to the panel on his own behalf.

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

### **Details of charge**

That you, a registered nurse:

1. After receiving an Interim Conditions of Practice Order on 28 February 2019, failed to comply with the conditions in that you:
  - a) failed to notify your employer of the conditions attached to the Order; **[PROVED]**
  - b) on one or more of the dates set out in Schedule 1, worked as a nurse in charge; **[PROVED]**
  - c) whilst providing nursing services, did not remain under supervision of a workplace line manager, mentor or supervisor; **[PROVED]**

- d) did not create a development plan as required to do so; **[PROVED]**
2. On 28 February 2019, while under oath at an Interim Order Hearing, you incorrectly told the Committee that you were not presently working as a nurse, or words to that effect; **[PROVED]**
  3. Your actions at charge 2 were dishonest in that you knew that you were employed as a nurse and were seeking to mislead the Committee as to your true employment status **[PROVED]**
  4. At a Substantive Hearing on or before 23 May 2019, you incorrectly told the Committee that you were not presently working as a nurse, or words to that effect; **[PROVED]**
  5. Your actions at charge 4 were dishonest in that you knew you were employed as a nurse and were seeking to mislead the Committee as to your true employment status. **[PROVED]**

AND in light of the above your fitness to practise is impaired as a result of your misconduct.

**SCHEDULE 1**

DATE	UNIT
1 March 2019 – 3 March 20149	Rednal
5 March 2019 – 9 March 2019	Redditch
13 March 2019 – 23 March 2019	Rednal
19 March 2019 – 29 March 2019	Redditch
25 March 2019 – 29 March 2019	Rednal

1 April 2019 – 5 April 2019	Redditch
8 April 2019 – 10 April 2019	Redditch

## **Background**

On 23 July 2018 Mr Atando commenced employment as a night nurse at the Green Nursing Home (the Home).

In May 2019 the Home conducted a random personal identification number (PIN) check on the nurses that it employed and it was discovered that Mr Atando was subject to an interim conditions of practice order imposed by the NMC in February 2019. The Home was allegedly never informed of this interim order by Mr Atando. It is alleged that Mr Atando worked at the home as a registered nurse in breach of his interim conditions of practice order from February 2019 until April 2019.

In April 2019 Mr Atando had taken annual leave from the Home for a period of four weeks. He did not, however, return to the Home to work. The Home subsequently terminated his employment.

Mr Atando attended a substantive hearing in relation to the previous case from 20 to 23 May 2019. At this hearing Mr Atando wrongly led that panel to believe that he was not currently employed as a nurse. Mr Atando subsequently received a substantive suspension order for a period of 12 Months.

## **Facts**

At the outset of the hearing Ms Brown informed the panel that Mr Atando had completed a Case Management Form (CMF) in which he had admitted all the charges. However, she also informed the panel that Mr Atando had indicated to the NMC that he was seeking legal representation and Ms Brown advised the panel that Mr Atando had made the

admission to the charges whilst he was not legally represented. Mr Atando has not informed the NMC if he had received legal advice. Ms Brown stated that it was a matter for the panel, however, submitted that in these circumstances she considered that it was for the NMC to prove the charges. She invited the panel to not find the charges proved by admission.

The panel noted Ms Brown's submissions and agreed that in these circumstances it was fair to Mr Atando to consider each of the charges individually and to draw its own conclusions from the evidence presented by the NMC.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Brown.

The panel has drawn no adverse inference from the non-attendance of Mr Atando.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- Ms 1: Non –Clinical Deputy Manager (since May 2019) and Home Administrator (November 2017-July 2020) at the Green Nursing Home

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the oral evidence of the witness and the documentary evidence provided by the NMC and Mr Atando.

The panel considered the evidence of the witnesses and made the following conclusions:

Ms 1: The panel considered the evidence of Ms 1 to be credible. She provided full and balanced answers to the questions put to her and admitted when she did not know something, recognising the limits of her knowledge. It was of the view that Ms was a reliable witness.

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

**Charge 1a)**

1. After receiving an Interim Conditions of Practice Order on 28 February 2019, failed to comply with the conditions in that you:
  - a) failed to notify your employer of the conditions attached to the Order;

**This charge is found proved.**

In reaching this decision, the panel took into account Ms 1's oral and written evidence and Mr Atando's admission to the charge, made without legal advice.

The panel noted that Ms 1 was the only witness giving evidence on this charge, however, she had not been the manager responsible for the Home for the totality of Mr Atando's employment. The panel noted, however, that Ms 1 had knowledge of the management of the Home and the human resources (HR) processes for the whole period of Mr Atando's employment. The panel further noted that in her written statement to the NMC Ms 1 stated:

*'There is nothing on [Mr Atando]'s personnel file to indicate that he disclosed any previous or current issues with the NMC.*

[...]



*I am unsure of the exact date but can confirm that the Home was never informed about any order that were handed down by the NMC in relation to [Mr Atando] and he failed to disclose this to the Home.'*

This was consistent with her oral evidence at the hearing. The panel considered that had the Home known about the interim conditions of practice order it would have meant that arrangements would have to have been made to accommodate the interim conditions. However, there is no evidence to show that this has been done and Mr Atando had continued to work as the sole registered nurse for the ward during night shifts. The panel therefore concluded that the Home did not know about the interim conditions imposed on Mr Atando.

The panel was therefore satisfied, on the balance of probabilities, that it is more likely than not that having received an Interim Conditions of Practice Order on 28 February 2019, Mr Atando had failed to comply with the conditions in that he failed to notify his employer of the Interim Order and the conditions attached to the Order.

### **Charge 1b)**

1. After receiving an Interim Conditions of Practice Order on 28 February 2019, failed to comply with the conditions in that you:
  - b) on one or more of the dates set out in Schedule 1, worked as a nurse in charge;

### **This charge is found proved.**

In reaching its decision, the panel took into account Ms 1's oral and written evidence and Mr Atando's admission to the charge, made without legal advice. It also took into account the staff rota of the Home for the period in question.

First, the panel determined what meaning it should adopt in relation to the phrase '*nurse in charge*'. The panel noted that Ms 1 explained that the Home did not use that terminology. The panel was of the view that a nurse in charge is the nurse who has responsibility for the care of patients on a ward or unit on a shift. Ms 1 confirmed that Mr Atando undertook that responsibility when working in the Home.

The panel noted the rota of the Home for the dates in question. It noted that Mr Atando worked only night shifts at the Home at the material time. The panel noted that the Home consisted of two units, Redditch and Rednal, which each had one registered nurse responsible for the patients on that unit during night shifts. The panel therefore concluded that Mr Atando was the sole nurse in charge for the patients on the unit and consequently, by the panel's definition, was the nurse in charge.

The panel was therefore satisfied, on the balance of probabilities that it is more likely than not that after receiving an Interim Conditions of Practice Order on 28 February 2019, Mr Atando failed to comply with the conditions in that he worked as a nurse in charge on one or more of the dates set out in Schedule 1.

### **Charge 1c)**

1. After receiving an Interim Conditions of Practice Order on 28 February 2019, failed to comply with the conditions in that you:
  - c) whilst providing nursing services, did not remain under supervision of a workplace line manager, mentor or supervisor;

**This charge is found proved.**

In reaching this decision, the panel took into account Ms 1's oral and written evidence and Mr Atando's admission to the charge, made without legal advice. It also took into account the staff rota of the Home for the dates in question and the interim conditions order, particularly condition 2.

The panel noted conditions 2 of the interim conditions of practice order which states:

*'2. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times on the same shift as, but not necessarily under the direct observation of a registered nurse who is physically present in or on the same ward, unit, floor or home that you are working in or on.'*

The panel noted that in particular the condition provided that Mr Atando must work at all times on the same shift as a registered nurse who is physically present on the same ward, unit, floor, or home.

The panel reminded itself of its findings in respect of charge 1a), that the Home did not know that Mr Atando had interim conditions of practice and that it had not, therefore, arranged for Mr Atando to have a mentor or supervisor with him on his shift. Further, the panel noted from the staff rota of the Home that Mr Atando was the sole registered nurse employed by the Home on shift on a unit at night. Whilst another registered nurse would have been working on the other unit, this was frequently an agency nurse. The panel accepted Ms 1's evidence that he was not under supervision when working at the Home. She had stated this in her written statement to the NMC and had confirmed it in her oral evidence:

*'As the Home was unaware of the ICoP [Interim conditions of practice] order against Francis, I can confirm that as he was the only nurse on a ward that he was not under the supervision of a line manager, mentor or supervisor nominated by the Home despite him being employed as a registered nurse and carrying out nursing duties.'*

The panel therefore concluded that Mr Atando worked without being under supervision at the Home.

The panel was therefore satisfied, on the balance of probabilities that it is more likely than not that after receiving an Interim Conditions of Practice Order on 28 February 2019, Mr Atando failed to comply with the conditions in that he did not remain under supervision of a workplace line manager, mentor or supervisor whilst providing nursing services.

### **Charge 1d)**

1. After receiving an Interim Conditions of Practice Order on 28 February 2019, failed to comply with the conditions in that you:
  - d) did not create a development plan as required to do so;

### **This charge is found proved.**

In reaching this decision, the panel took into account Ms 1's oral and written evidence and Mr Atando's admission to the charge, made without legal advice. It also took into account the interim conditions order, particularly condition 3.

Condition 3 states:

- '3. You must work with your line manager, mentor or supervisor (or their nominated deputy) to create a personal development plan to be reviewed regularly and designed to address the concerns about the following areas of your practice:*
- *De-escalation techniques / management of aggression*
  - *Communication skills'*

The panel noted that Ms 1 explained in her written statement to the NMC:

*'I can also confirm that there is no indication on [Mr Atando]'s personnel file nor to my personal knowledge that he created a personal development plan in relation to de-escalation techniques, management of aggression or communication skills. Again, this would not have been done as the Home was not aware of the ICoP order.'*

Ms 1 confirmed this in her oral evidence.

The panel noted that there was no evidence produced to show that Mr Atando did create a personal development plan and it was assured by Ms 1 that such a plan had not been created by the Home. The panel concluded that had a development plan been created by the Home manager then Ms 1 would have known about it. It was therefore satisfied that Mr Atando did not create a development plan as set out in condition 3.

The panel was therefore satisfied, on the balance of probabilities that it is more likely than not that after receiving an Interim Conditions of Practice Order on 28 February 2019, Mr Atando failed to comply with the conditions in that he did not create a development plan as he was required to do.

### **Charge 2)**

2. On 28 February 2019, while under oath at an Interim Order Hearing, you incorrectly told the Committee that you were not presently working as a nurse, or words to that effect;

### **This charge is found proved.**

In reaching this decision, the panel took into account the transcript of the Interim Order Hearing which took place on 28 February 2019 together with Mr Atando's admission to the charge, made without legal advice.

The panel noted the transcript of the hearing which confirms that Mr Atando was under oath during his oral evidence:

*'THE REGISTRANT: Alright. I'll speak in the witness under oath.*

*THE CHAIR: Alright, and perhaps you would give some indication to the Panel Secretary about which oath you will take, on which holy book or whether you would prefer simply to affirm, which is, as it were, an oath given without a wholly book.*

*Make your way to the witness desk and just remain standing whilst you choose what you're going to do.*

*MR FRANCIS ATANDO, sworn*

It further noted that Mr Atando stated and suggested in his evidence that he was not working several times, whilst being under oath:

*'Honestly, since I was dismissed from the Priory Hospital, I have not worked. [...] I did not look for work immediately, and since then I have not been working because of some personal reasons.*

*[...]*

*I have not done any training. Obviously, most trainings are done when you are employed, but because I've not been working I've not done any training,*

*[...]*

*Knowing that I have to and want to get back to work now, I have been considering doing a private training on some courses before I start a new job if I should get one within the next couple of weeks.*

*[...]*

*I don't actually think I need that particular practical aspect of the training, maybe be just reading and reflecting on that when I get work, because you cannot just do a practical training without work. It depends wherever you are working, what type of setting, before you can do that.*

*[...]*

*I actually would like the Panel to really consider the aspects of being the nurse in charge, the reason being that it would be very, very difficult for me to get the job if I cannot be in charge. Hospitals, nursing homes or care homes – at times you are the only nurse, which means automatically you are the only nurse, so imposing that will be very, very difficult, and I would like the Panel to consider that, please.'*

The panel was therefore satisfied, on the balance of probabilities that it is more likely than not, that on 28 February 2019, while under oath at an Interim Order Hearing, Mr Atando

incorrectly told the Committee that he was not presently working as a nurse, or words to that effect.

### **Charge 3)**

3. Your actions at charge 2 were dishonest in that you knew that you were employed as a nurse and were seeking to mislead the Committee as to your true employment status.

### **This charge is found proved.**

In reaching this decision, the panel took into account the transcript of the Interim Order Hearing which took place on 28 February 2019, Mr Atando's employment contract with the Home, the staff rota of the Home for the time in question, and his admissions, made without legal advice.

The panel reminded itself of the test of dishonesty as set down in the case of *Ivey v Genting Casinos* [2017] UKSC 67 and its findings in charge 2.

The panel noted Mr Atando's employment contract with the Home which states the following start date of employment: '23<sup>rd</sup> July 2018'. It also noted the staff rota showing that he was working as a staff nurse at the home during the period in question.

The panel was of the view that Mr Atando knew that he was working at the Home when giving evidence under oath at the Interim Order hearing. It therefore concluded that Mr Atando's state of mind was dishonest as he had intended to deceive the Committee. It was of the view that an ordinary honest person, in knowledge of all the evidence before it, would consider this to be a dishonest act.

The panel was therefore of the view, on the balance of probabilities, that it is more likely than not that Mr Atando's actions at charge 2 were dishonest in that he knew that he was

employed as a nurse and was seeking to mislead the Committee as to his true employment status.

#### **Charge 4)**

4. At a Substantive Hearing on or before 23 May 2019, you incorrectly told the Committee that you were not presently working as a nurse, or words to that effect;

#### **This charge is found proved.**

In reaching this decision, the panel took into account Mr Atando's written submissions to the Substantive Hearing, the payslips for Mr Atando for April and June 2019 and Ms 1's oral and written evidence, and Mr Atando's admission to the charge, made without legal advice.

The panel first considered the word 'told' as written in charge 4. The panel noted that Ms Brown in her submission argued that the wording in the charge 'told' was purely semantics and that the panel can, therefore, accept that Mr Atando's written submissions was the information provided to the substantive committee. The panel accepted Ms Brown's submissions and was of the view, that although it only had Mr Atando's written submissions before it as evidence, and not the transcript of the hearing, that in this context 'told' meant informing the panel as the written submissions were submitted with the purpose of addressing and informing the committee.

The panel noted that the written submissions by Mr Atando to the substantive panel state:

*'Although I have not done any training courses I have enrolled on courses but due to financial difficulties as I have not worked due Sanctions and family issues I hope to get back to work if some sanctions are taking off.'* [sic]



The panel therefore concluded that Mr Atando had 'told' the panel by virtue of his written submissions that he was not presently working as a registered nurse.

The panel noted the payslip, dated 30 June 2019 indicating Mr Atando was still an employee of the Home at that time.

In her witness statement Ms 1 confirmed that Mr Atando was employed by the Home until June 2019 although Ms 1 was not sure of when Mr Atando's employment was terminated. This was consistent with her oral evidence. There was no evidence before the panel to suggest that Mr Atando had undertaken a shift at the Home since commencing a period of leave on 12 April 2019. However, the panel was satisfied that the Home continued to consider Mr Atando to be an employee.

The panel was therefore satisfied, on the balance of probabilities that it is more likely than not that at a Substantive Hearing on or before 23 May 2019, Mr Atando incorrectly told the Committee that he was not presently working as a nurse, or words to that effect.

#### **Charge 5)**

5. Your actions at charge 4 were dishonest in that you knew you were employed as a nurse and were seeking to mislead the Committee as to your true employment status.

#### **This charge is found proved.**

In reaching this decision, the panel took into account Mr Atando's written submissions to the Substantive Hearing, his employment contract with the Home, the staff rota of the Home for the period in question, and his admissions, made without legal advice.

The panel reminded itself of the test of dishonesty as set down in the case of *Ivey v Genting Casinos* [2017] UKSC 67 and its findings in charge 4. It also reminded itself of its findings in charge 3.

The panel was of the view that Mr Atando knew that he was working at the Home when he submitted his written submissions to the Committee at the substantive hearing. It therefore concluded that Mr Atando's state of mind was dishonest and he had intended to deceive the Committee. It was of the view that an ordinary honest person, in knowledge of all the evidence before it, would consider this to be a dishonest act.

The panel was therefore satisfied that, on the balance of probabilities, it is more likely than not, that Mr Atando's actions at charge 4 were dishonest in that he knew he was employed as a nurse and was seeking to mislead the Committee as to his true employment status.

### **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 Mr Atando's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

The panel adopted a two-stage process in its consideration. 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, Mr Atando's 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.*'

Ms Brown invited the panel to find that the facts found proved amount to misconduct. She referred the panel to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision and identified the specific, relevant standards where she submitted Mr Atando's actions amounted to misconduct.

Ms Brown submitted that Mr Atando did not comply with the interim conditions imposed on his registration and thereby put patients at risk. She submitted that the conditions were put in place by a committee to ensure that Mr Atando was able to practice safely and by disregarding the panel's decision he seriously departed from the standards expected of a registered nurse. She further submitted that disregarding the interim conditions held a potential for serious and unwarranted risk of harm and raises fundamental questions about his trustworthiness as a nurse and individual.

Ms Brown invited the panel to find that by giving false evidence and making false statements during regulatory hearings, Mr Atando had acted dishonestly. She submitted that Mr Atando made false representations with the intent to deceive the committee. She submitted that Mr Atando's dishonesty had been sustained and directly related to his clinical practice, which was restricted due to concerns about patient safety. Mr Atando did not adhere to these conditions, nor did he tell his employer about them.

Ms Brown reminded the panel that Mr Atando admitted the charges. She submitted that Mr Atando's actions fell far below the standard expected of a registered nurse and therefore amount to misconduct.

### **Submissions on impairment**

Ms Brown 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), *Meadow v GMC* [2007] EWCA Civ 1390 and *Cohen v GMC* [2008] EWHC 581 (Admin).

Ms Brown submitted that all four limbs of *Grant* are engaged in this case. She submitted that Mr Atando has put a number of patients at unwarranted risk of harm by disregarding his regulator's restrictions on his practice. By doing so he has brought the nursing profession into disrepute as he did not demonstrate the standard of trustworthiness expected of a nurse. She submitted that Mr Atando breached the fundamental tenets of the profession by not making the care of his patients his first priority and he acted dishonestly.

Ms Brown submitted that dishonest behaviour raises concerns about trust. Mr Atando repeated his dishonesty, which signified a clear intent to deceive. He gave false evidence at the interim order hearing and also failed to advise his employers of his restrictions, which signifies a clear intent to deceive. He then made dishonest written representations at the substantive hearing. Ms Brown submitted that his actions were devoid of the professional and moral standards expected of a nurse and that there is therefore a clear risk of repetition in the future.

Ms Brown submitted that Mr Atando had provided written submissions reflecting to his behaviour. She submitted that whilst Mr Atando admitted the charges, including dishonesty, he was unable to provide an explanation for his actions. She submitted that this demonstrated that Mr Atando does not have insight into his failings.

Ms Brown submitted that in order 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 a finding of current impairment is required. She therefore submitted that a finding of impairment is necessary on public interest as well as public protection grounds.

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), and *Meadow*.

## **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 Mr Atando's actions did fall significantly short of the standards expected of a registered nurse and amounted to a breach of the Code.

Specifically:

### **20 Uphold the reputation of your profession at all times**

*To achieve this, you must:*

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times [...]*

20.8 *act as a role model of professional behaviour [...]*

### **23 Cooperate with all investigations and audits**

*This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.*

*To achieve this, you must:*

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

*23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment*

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 interim conditions of practice order restricting Mr Atando's practice was put in place by a committee to ensure that he practised safely and to protect the public from any risk of harm. However, it noted that Mr Atando deliberately misled the committee at the interim order hearing, under oath, and at the substantive hearing stating that he was not presently working as a registered nurse. Furthermore, he also misled his employer by not informing them of the restrictions placed on his registration. The panel was of the view that Mr Atando therefore deliberately deceived his regulator and his employer and had not acted with integrity or honesty. The panel was of the view that any other registered nurse would find this behaviour deplorable.

The panel therefore found that Mr Atando's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

## Decision and reasons on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

*'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*

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

The panel finds that patients were put at a real risk of harm as a result of Mr Atando not adhering to the interim restrictions placed on his registration. Mr Atando's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty, particularly being dishonest under oath towards his regulator, extremely serious.

Regarding insight, the panel considered Mr Atando's submissions to the panel. In his reflective piece Mr Atando states:

*'I really feel very sorry for my behaviour of not been honest. Up until now I honestly cannot understand why I failed to disclose the truth. I will therefore apologies for my behaviour which I am positive will not happen again in future.'* [sic]

The panel was of the view that, whilst Mr Atando acknowledges that he acted dishonestly and made admissions to the charges, he is not able to give an explanation with regard to his behaviour. The panel noted that Mr Atando shows remorse about his actions. However the panel had no evidence before it to show that his insight is sufficient with regard to the impact his dishonesty could have had on patients, their families, his employer, the



profession as a whole and the confidence the public has in nurses. The panel was therefore of the view that Mr Atando shows limited insight into his actions.

The panel considered that dishonesty is difficult to remediate. The panel noted that the dishonesty displayed by Mr Atando, particularly giving false evidence to his regulator whilst under oath is one of the most serious forms of dishonesty. The panel concluded that to remediate this type of dishonesty Mr Atando would need to evidence an extended period of honest behaviour. The panel was of the view that whilst Mr Atando showed some level of remorse his limited insight reduces any possibility of remediating his misconduct until further insight has been gained.

Therefore, the panel is of the view that there is a risk of repetition based on the limited insight and the lack of remediation. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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

The panel was of the view that the public confidence in the profession would be particularly damaged if a finding of impairment was not made on a nurse who disregarded the need to protect the public and was dishonest to his employer and most particularly his regulator, whilst under oath. The panel therefore concluded that public confidence in the profession and its regulator would be undermined if a finding of impairment were not made in this case and therefore also finds Mr Atando's fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

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

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

## **Submissions on sanction**

Ms Brown informed the panel that the NMC is seeking the imposition of a striking off order. She outlined the aggravating features and submitted that there were no mitigating features in the case.

Ms Brown submitted that Mr Atando's actions, particularly the dishonesty, were so serious that they are not compatible with remaining on the register. She submitted that there have been regulatory findings against Mr Atando and that he was dishonest to his regulator on more than one occasion about his employment status. She submitted that lying to his employer regarding restrictions on his practice is a direct abuse of trust. Ms Brown submitted that Mr Atando showed a pattern of misconduct over a period of time, has disregarded an order imposed by his regulator intended to protect the public and uphold public confidence.

Ms Brown submitted that the concerns are serious and had the potential to put patients at a serious risk of harm and that the panel had identified a real risk of repetition.

Ms Brown submitted that Mr Atando's misconduct is fundamentally incompatible with the standards expected of a registered nurse. She therefore submitted that a strike-off would

be the only order sufficient to protect the reputation of the profession and maintain the professional standards necessary to protect the public.

### **Decision and reasons on sanction**

Having found Mr Atando's fitness to practise is 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 considered the following aggravating features:

- The misconduct occurred whilst regulatory proceedings were ongoing;
- Repeated dishonesty, resulting in a sustained pattern of misconduct;
- Conduct which put patients at risk of suffering harm, as Mr Atando failed to comply with conditions which were formulated to protect patients; and
- Mr Atando gave false evidence to his regulator under oath.

The panel also took into account the following mitigating features:

- Mr Atando had admitted all the charges; and
- Mr Atando submitted a reflective piece which indicates remorse and some insight albeit incomplete.

The panel noted the testimonial submitted on behalf of Mr Atando, albeit the author did not indicate awareness of the proceedings, meaning that the panel could place little weight upon it.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that 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 Mr Atando's 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 Mr Atando'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. 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 Mr Atando's registration would be a sufficient and appropriate response. The panel noted that the misconduct identified was directly linked to Mr Atando's failure to comply with interim conditions that were imposed on his practice. It was of the view a conditions of practice order would not provide the necessary public protection in this case. The panel therefore concluded that there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on Mr Atando's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel noted that the misconduct displayed was not a single incident and was maintained over a period of time. The panel further noted the particularly serious misconduct of being dishonest to Mr Atando's regulator, on one occasion under oath and dishonesty towards his employer in failing to declare his interim conditions of practice

order. The panel was of the view that Mr Atando has not shown sufficient insight into his failings.

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

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

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

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

The panel was of the view that being deceitful towards his regulator and his employer breached Mr Atando's duty of candour. The panel determined that this raised fundamental questions about Mr Atando's professionalism. It concluded that public confidence in the profession would not be maintained if a lesser sanction than a striking-off order was imposed.

Mr Atando's actions fell significantly below the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr Atando's misconduct

was extremely serious and to allow him to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Atando's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Mr Atando in writing.

### **Interim order**

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mr Atando's own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Submissions on interim order**

The panel took account of the submissions made by Ms Brown. She submitted that an interim order is necessary to protect the public for the reasons identified earlier by the panel in their determination until the striking-off order comes into effect. She therefore

invited the panel to impose an interim suspension order for a period of 18 months to cover the 28 day appeal period and any period of appeal.

The panel heard and 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 found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.