

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

**Substantive Hearing
Monday 26 – Tuesday 27 July 2021**

Virtual Hearing

Name of registrant:	Ms Roselyn Chukwu
NMC PIN:	97C2178E
Part(s) of the register:	Registered Nurse – Sub Part 1 RNA: Adult Nursing (1 June 2000)
Area of registered address:	London
Type of case:	Misconduct
Panel members:	Wendy Yeadon (Chair, lay member) Sarah Furniss (Registrant member) Jennifer Portway (Lay member)
Legal Assessor:	Martin Goudie QC
Panel Secretary:	Jennifer Morrison
Nursing and Midwifery Council:	Represented by Adam Slack, Case Presenter
Ms Chukwu:	Present and represented by Dr Clement Ugbomah (on 26 July 2021 only)
Facts proved:	All
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge

'That you, a registered nurse:

- 1) On 30 April 2019, failed to disclose to a panel of the Nursing and Midwifery Council Investigating Committee that you had been the subject of a previous NMC referral in December 2016.*
- 2) Your actions in charge 1 above were dishonest in that by failing to disclose the previous referral you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.*
- 3) On 30 April 2019, when asked about your employment history by a panel of the NMC Investigating Committee, failed to disclose a period of employment at North Middlesex University Hospital.*
- 4) Your actions in charge 3 above were dishonest in that by failing to disclose a period of employment during which you knew you had been subject to disciplinary action you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.*
- 5) On 30 April 2019, when asked about any previous capability or disciplinary issues by a panel of the NMC Investigating Committee, failed to disclose that you had been dismissed from your employment at the North Middlesex University Hospital following an investigation and disciplinary procedure.*
- 6) Your actions in charge 5 above were dishonest in that by failing to disclose that you had been dismissed from your employment following an*

investigation and disciplinary procedure you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) risk to patients.

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

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the documentary evidence in this case together with the submissions made by Mr Slack on behalf of the Nursing and Midwifery Council (NMC) and by Dr Ugbomah on your behalf.

The panel accepted the advice of the legal assessor.

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.

Background

The charges arose following representations made by Dr Ugbomah on your behalf at your interim order hearing (related to 071854/2019) on 30 April 2019.

During that hearing, you went through your employment history via Dr Ugbomah for the period 2000 to 2019, in the context of attempts by the panel to understand whether any other concerns had ever been raised about your practice. You allegedly omitted to disclose a three to four-year period of substantive employment as a band 5 nurse at North Middlesex University Hospital NHS Trust ('the Trust') between 2013 and 2017.

Within this period of employment, you underwent two disciplinary proceedings, one of which resulted in a warning in 2014 and one of which resulted in your dismissal in 2017. Following your dismissal, the Trust referred you to the NMC (059350/2016). You later admitted to this period of employment, the associated disciplinary proceedings and the NMC referral, but only after you were challenged on the accuracy of the information after the panel had retired into camera to deliberate the necessity of an interim order. You allegedly did not correct the panel's understanding, formed through questions of the NMC case presenter at the outset of the hearing, when you were present in the room, that you had not previously been the subject of an NMC referral. You allegedly did not correct this assumption at any point before the panel went into camera to consider the necessity of an interim order.

You also allegedly did not correct the panel's understanding that you had not been subject to any disciplinary proceedings during your employment history, after the panel asked Dr Ugbomah *"during that period of time no capability or disciplinary issues of any description?"* Dr Ugbomah answered *"no"*.

Mr Slack took the panel through the background of the case and referred it to the relevant pages in the bundle. He submitted that you were referred to the NMC by the Central and North West London NHS Trust in April 2019 in relation to allegations of lack of competency. As a result of that referral, an interim order hearing was scheduled for 30 April 2019.

Mr Slack told the panel that during that hearing, the Chair asked your representative, Dr Ugbomah, for a summary of your career. Mr Slack submitted that, having taken instructions from you, Dr Ugbomah provided a chronology of your nursing career. The Chair asked you if you had been subject to any concerns or disciplinary procedures and again, Dr Ugbomah made it clear that you had not been subject to any disciplinary hearings or proceedings.

However, Mr Slack submitted that Dr Ugbomah omitted a period of four years between 1 July 2013 and 6 June 2017, when you were working at the North Middlesex University

Hospital Trust ('the Trust'). He told the panel that during this time, you were subject to two disciplinary procedures and a previous referral to the NMC before subsequently being dismissed.

Mr Slack submitted you did nothing to correct this misinformation, or to correct Dr Ugbomah when he repeatedly stated that you had not been subject to disciplinary hearings or proceedings.

Mr Slack submitted that after the panel retired to consider the interim order, the case presenter carried out an enquiry which revealed the employment, disciplinary procedures and the previous referral. She told that panel that you had in fact been referred to the NMC on 21 December 2016 by the Trust, but the Case Examiners found that there was no case to answer.

When confronted with this discovery, Dr Ugbomah provided an explanation that you had been overwhelmed by the process of appearing in front of the panel and had simply forgotten about this period of employment and the subsequent referral. Dr Ugbomah explained that he had not been expecting to be asked about your employment chronology, or he would have noted the full details before the hearing. Upon questioning, Dr Ugbomah, on instructions from yourself, explained that you had been through a disciplinary process with the Trust, and that the matter is now in the High Court.

Mr Slack submitted that it is the NMC's case that you intentionally withheld the information about the relevant period of employment and failed to disclose details of the referral and disciplinary actions when asked by the Chair in an attempt to deceive the panel into concluding there was a lower risk to the public than might otherwise have been concluded. He referred the panel to the case law of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 and further submitted that dishonesty is a two-stage test: your knowledge or belief as to the facts, and whether your conduct was dishonest by the standards of ordinary decent people.

Mr Slack asked the panel to consider the following when making its decision, first, that Dr Ugbomah gave a comprehensive account of your career, including when and where training sessions were carried out, and second, that he often paused to take instructions from you. Dr Ugbomah was asked several times about disciplinary hearings, where you had many opportunities to interrupt and correct him. The panel on that day was not fact-finding and later was unequivocal in its statements, which concluded it had no doubt it had been misled, and did not find it credible that your stress at the interim order hearing accounted for this.

Dr Ugbomah, on your behalf, submitted to the current panel that you were sorry that it appeared you had misled the Investigating Committee panel; however, that was not true. Regarding charges 1 and 2, he submitted that whilst it was true you had previously been referred to the NMC by the Trust, the NMC concluded that you had no case to answer with respect to that referral. Because it was determined that you had no case to answer, you did not view the matter as significant or important enough to bring to that panel's attention. Dr Ugbomah submitted that if an individual is subject to court proceedings and found not guilty, the matter would be removed from an individual's record. He further submitted that you were in "*shock*" at the interim order hearing, and that your answers to that panel did not reflect intentional dishonesty or deception.

With respect to charges 3 and 4, Dr Ugbomah acknowledged that you failed to disclose your period of employment at the Trust. However, he submitted that it was not easy for a registrant to appear before her regulator, and that at the time, you were "*frozen and shivering*" with shock. Dr Ugbomah submitted that an employment dispute between you and the Trust was being heard by the High Court, and you had been informed that you could not discuss the case with others. He further submitted that the NMC had not asked you to be prepared to account for your complete employment history at the interim order hearing. With respect to charge 5, Dr Ugbomah submitted that no nurse or doctor would lie before a regulatory panel, because they would be found out. Had you not been in shock, you would have been able to tell the Investigating Committee panel about the High Court case.

Dr Ugbomah provided documentation demonstrating that there were live proceedings between you and your further employer. The directions provided did not disclose any restriction on discussing those proceedings or their contents. Dr Ugbomah said you had given an oral undertaking to the Court not to discuss those proceedings.

Dr Ugbomah further submitted that *R (on the application of Miller) v Prime Minister* [2019] UKSC 41 was authority for the proposition that if the previous referral against you was not proved, then no proceedings could arise from your actions in those previous proceedings.

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

Charge 1

'On 30 April 2019, failed to disclose to a panel of the Nursing and Midwifery Council Investigating Committee that you had been the subject of a previous NMC referral in December 2016.'

This charge is found proved.

In reaching this decision, the panel had regard to the transcript of the interim order hearing of 30 April 2019. It noted that the transcript showed that the Chair of the Investigating Committee panel asked the case presenter whether you had been subject to any other referrals during your career. The case presenter said that she believed this was the first time you had been referred but agreed to make further enquiries, and the panel went into recess. This panel noted that neither you nor Dr Ugbomah took the opportunity to inform that panel that you had been the subject of an NMC referral in 2016.

The panel also noted from the transcript that:

- i) Dr Ugbomah confirmed that he did not believe you had been subject to a previous referral because he had found no record of any referrals on the NMC

- website. The panel noted that you were seated next to Dr Ugbomah during the hearing.
- ii) Dr Ugbomah stated that you had worked for 20 years for the NHS without problems.
 - iii) In response to a question from the Chair as to whether you had been subject to any disciplinary issues of any description, Dr Ugbomah stated “*none*”.

The panel was mindful that it had not been suggested that Dr Ugbomah’s submissions were based upon anything other than the information you as his client provided to him. Therefore, it concluded that if he was addressing the panel on your behalf, he was taking instructions from you. The panel further noted from the transcript that Dr Ugbomah had conferred with you on several occasions to confirm facts, and then reported back to the Investigating Committee panel. It concluded that you would have had another opportunity to correct the panel’s understanding of your regulatory history.

Charge 2

‘Your actions in charge 1 above were dishonest in that by failing to disclose the previous referral you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.’

This charge is found proved.

In reaching this decision, the panel took into account Dr Ugbomah’s submissions that during the interim order hearing, you were in a state of shock. The panel considered the transcript of that hearing; it did not have the benefit of considering any evidence from you as to your state of mind at the hearing, as you did not give evidence either at the hearing or today.

The panel concluded that even in your state of shock, it was implausible that you failed to notice the Investigating Committee panel was being misled. The panel also noted that you would have had over an hour to discuss the discrepancy with Dr Ugbomah whilst the panel was in camera and to correct the Investigating Committee panel, but did not do so.

The panel noted Dr Ugbomah's submission that you did not disclose the previous referral because you did not think it was important, as the NMC had concluded that there was no case to answer regarding the allegations. However, the panel had regard to a signed statement that was prepared by you around 2017 and submitted to the NMC in response to the allegations in the 2016 referral. The panel concluded that a nurse with over 20 years' experience would be very familiar with her duty to act openly and honestly in accordance with the Code and to facilitate any investigation by her regulator, but you did not do so out of a desire to deceive the Investigating Committee panel into concluding you posed no (or a lower) risk to patients.

Charge 3

'On 30 April 2019, when asked about your employment history by a panel of the NMC Investigating Committee, failed to disclose a period of employment at North Middlesex University Hospital.'

This charge is found proved.

In reaching this decision, the panel had regard to the transcript of 30 April 2019, which showed that Dr Ugbomah outlined in considerable detail your employment history going back to 2000, and did not mention your employment with the Trust. The panel noted that the chronology was scrutinised by the Investigating Committee panel almost line for line, and at no point did you indicate to Dr Ugbomah that an omission in your employment history had occurred.

The panel concluded as it did with charge 1 that Dr Ugbomah had conferred with you on several occasions to confirm facts, and then reported back to the interim order panel. It therefore concluded that you would have had the opportunity to rectify the omission of nearly four years of employment history through conferring with Dr Ugbomah.

Charge 4

'Your actions in charge 3 above were dishonest in that by failing to disclose a period of employment during which you knew you had been subject to disciplinary action you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.'

This charge is found proved.

In reaching this decision, the panel considered whether you appreciated that it was dishonest conduct to avoid sharing with the Investigating Committee panel information that mirrored the substance of that hearing's allegations. The panel noted your explanation for your conduct through Dr Ugbomah's submissions that you were in a state of shock, that you had made an oral undertaking not to disclose the existence of the High Court case and that you thought it was not important to mention. The panel considered that these three explanations were not consistent with one another and that they had not heard any evidence from you to substantiate these explanations. Whilst the burden of proof is on the NMC where an explanation is raised by you, it is difficult to properly consider it where it is based predominantly on submissions rather than evidence. The panel concluded that you did not disclose the period of employment because you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.

Charge 5

'On 30 April 2019, when asked about any previous capability or disciplinary issues by a panel of the NMC Investigating Committee, failed to disclose that you had been dismissed from your employment at the North Middlesex University Hospital following an investigation and disciplinary procedure.'

This charge is found proved.

In reaching this decision, the panel had regard to the transcript of 30 April 2019. It noted that when Dr Ugbomah was asked by the Investigating Committee Chair about whether you had been subject to any previous capability or disciplinary issues during previous employment, he confirmed you had not. The panel concluded that you would have had the opportunity to correct the inaccurate information through conferring with Dr Ugbomah, but did not do so.

Charge 6

'Your actions in charge 5 above were dishonest in that by failing to disclose that you had been dismissed from your employment following an investigation and disciplinary procedure you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) risk to patients.'

This charge is found proved.

In reaching this decision, the panel considered whether you appreciated that it was dishonest conduct to avoid sharing with the Investigating Committee panel information that mirrored the substance of that hearing's allegations. The panel noted your explanation for your conduct through Dr Ugbomah's submissions that you were in a state of shock, that you had made an oral undertaking not to disclose the existence of the High Court case and that you thought it was not important to mention. The panel considered that it was not plausible for all three explanations to be true, and concluded that you did not disclose your

dismissal from the Trust because you were attempting to deceive the panel of the NMC Investigating Committee into concluding you posed no (or a lower) threat to patients.

Decision and reasons on proceeding in the absence of Ms Chukwu

On the morning of 27 July 2021, the legal assessor informed the panel that Ms Chukwu, via her representative, had chosen to disengage with the proceedings. Mr Goudie said that on the evening of 26 July 2021, following consideration of the panel's decision on the facts, Dr Ugbomah had made contact with the panel secretary over the WhatsApp messaging service. Dr Ugbomah had informed the panel secretary that he and Ms Chukwu planned to appeal the panel's decision to the High Court, would be disengaging from the proceedings and would join the hearing at 10:15 on 27 July 2021 to explain their position. The panel secretary explained to Dr Ugbomah that it would be more helpful for Dr Ugbomah to discuss his position with Mr Goudie, Mr Slack and the panel secretary earlier that morning.

Mr Goudie informed the panel that at that meeting on the morning of 27 July 2021, Dr Ugbomah stated that Ms Chukwu wished to appeal on the grounds that she should not have been before the Investigating Committee panel of 20 April 2019 due to a lack of evidence supporting the NMC's case. Mr Goudie said that he advised Dr Ugbomah that he had advanced that argument before today's panel, which was rejected. Additionally, Mr Goudie advised that an appeal to the High Court would be against any order made, not against the panel's decision on the facts. If no order was made, no appeal would be necessary; therefore, it was in Ms Chukwu's interests to engage with the remainder of the proceedings.

Mr Goudie further informed the panel that Dr Ugbomah said that he was intending to take legal action against the NMC on Ms Chukwu's behalf for the loss of earnings she incurred during the six months she was previously subject to an interim suspension order. Mr Goudie said that he advised Dr Ugbomah that this was not a formal meeting and that he was not an NMC employee; therefore Dr Ugbomah should proceed with any action

through proper channels if he so chose. He further stated that he advised Dr Ugbomah that he may wish to be present for the legal advice to the panel with respect to proceeding in Ms Chukwu's absence. Mr Goudie said that at the end of this meeting, Dr Ugbomah confirmed that Ms Chukwu would be disengaging from the proceedings.

Mr Slack informed the panel that at that meeting, Dr Ugbomah stated that Ms Chukwu had lost faith in the NMC process.

The panel decided to proceed in Ms Chukwu's absence. In reaching its decision, it accepted the advice of Mr Goudie and had regard to Rule 21 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules'). The panel was mindful of the need to balance the interests of Ms Chukwu against the public interest in the expeditious consideration of this case. The panel was satisfied that Ms Chukwu's decision to disengage was voluntary, and that with regard to the requirements of Rule 21, she had been given reasonable notice of the hearing. It was satisfied that although Ms Chukwu's representative had stated that she had lost faith in the process, she nonetheless had a duty to engage with her regulator. Further, the panel considered that Ms Chukwu's position meant that it was very unlikely that she would attend a future hearing if today's proceedings were adjourned.

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 Ms Chukwu'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, Ms Chukwu'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.*'

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

Mr Slack identified the specific, relevant standards where Ms Chukwu's actions amounted to misconduct. He submitted that the following provisions of the Code were of particular relevance in this case:

'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...'

Mr Slack submitted that the breach of these provisions of the Code and the clear dishonesty shown by Ms Chukwu must amount to misconduct, as the intention of deliberately misleading the Investigating Committee panel was far from proper in the circumstances.

Submissions on impairment

Mr Slack 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. Mr Slack submitted that the question of current impairment is often approached by addressing the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin):

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:

- (i) 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*
- (ii) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- (iii) 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*
- (iv) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Mr Slack submitted that as a result of the facts found proved, limbs (ii) through to (iv) were engaged. He submitted that Ms Chukwu had clearly acted dishonestly by deliberately misleading a panel as to her employment, disciplinary and regulatory history, and that this marked an obvious breach of the duty of candour. Mr Slack submitted that Ms Chukwu's conduct brought the profession into disrepute, breached the fundamental duty of candour, and was dishonest.

Mr Slack submitted that impairment is a forward-thinking exercise which looks at the risk the registrant's practice poses in the future. He referred the panel to the approach of Silber J in the case of *R (on application of Cohen) v General Medical Council* [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.

Mr Slack submitted that given the attitudinal nature of Ms Chukwu's actions and her ongoing denial, the concern has not been remediated and therefore, her conduct is highly likely to be repeated.

The panel accepted the advice of the legal assessor which included reference to *Roylance v General Medical Council (No. 2)*.

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 registrant's actions did fall significantly short of the standards expected of a registered nurse, and that registrant's actions 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...'

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 Ms Chukwu's intentional misleading of her regulator raised questions about her trustworthiness as a registered professional. It was satisfied that her 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, Ms Chukwu'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 *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* in reaching its decision.

The panel noted that Ms Chukwu's position was that the 2016 NMC referral was groundless and as a result, no further action had been taken, therefore she did not believe it was of importance to be raised during the 2019 interim order hearing. However, the panel was satisfied that the merits of the 2016 referral were immaterial to whether Ms Chukwu should have corrected the 2019 panel's understanding about her previous regulatory referral, and that failure was a separate issue to her failure to respond honestly to specific questions regarding her employment and disciplinary history. The panel noted that Ms Chukwu had a full hour during the time the 2019 panel was in camera to correct those omissions, and concluded that her failure to do so was out of a desire to conceal information that may have led to a less favourable outcome. It concluded that a member of the public would reasonably expect a nurse in that situation to take action to ensure the panel was not misled.

The panel finds that Ms Chukwu's misconduct has 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 the charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that during these proceedings, Ms Chukwu, through her representative Dr Ugbomah, was inconsistent about the reasoning behind her actions. It further noted that at no point has she appeared to recognise the fundamental issue of dishonesty that is at the heart of the case against her, nor has she shown any

insight into how her conduct has impacted upon the reputation of the profession or what she could have done differently.

The panel was satisfied that the misconduct in this case is capable of remediation. However, the panel has not had sight of any documentary evidence or heard any oral evidence to indicate that Ms Chukwu has taken any steps towards acknowledging or addressing the concerns about her conduct. It therefore concluded that there is a high risk of repetition.

The panel bore in mind that the overarching objectives of the NMC are 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and finds that Ms Chukwu's fitness to practise is impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Ms Chukwu'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 Ms Chukwu off the register. The effect of this order is that the NMC register will show that Ms Chukwu 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

Mr Slack informed the panel that in the Notice of Hearing, dated 2 June 2021, the NMC had advised Ms Chukwu that it would seek the imposition of a six-month suspension order if it found her fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal and submitted that a striking-off order was more appropriate in the light of the panel's findings.

Mr Slack submitted that Ms Chukwu's misconduct was clearly too serious to warrant no action or a caution. Furthermore, Ms Chukwu had in no way demonstrated any insight into her conduct or made any attempts at remediation. He submitted that conditions of practice were insufficient to deal with the seriousness of the case and unworkable given the attitudinal nature of the concerns.

Mr Slack acknowledged that although the SG lists dishonesty as an offence where a striking-off order may be appropriate, this dishonesty could be said to be a one-off offence, or opportunistic and thereby warrant a less severe sanction. However, he submitted that Ms Chukwu's misconduct had taken place in the arena of her regulator, and she had provided no evidence that she had or would remediate her misconduct. Mr Slack submitted that this raised questions about Ms Chukwu's fundamental trustworthiness and candour, and that the public interest would be served only through Ms Chukwu's removal from the register.

Mr Slack submitted that the NMC's initial sanction bid was made several months ago, when in principle, the concerns about Ms Chukwu's conduct were not beyond remediation. Had Ms Chukwu shown any degree of insight or made attempts to remediate her conduct over the two years since the initial referral was made, or had she been amenable to accepting the charges against her, Mr Slack submitted that a suspension order with a review may have been useful and appropriate. However, in the absence of those elements, a striking-off order was now the appropriate and proportionate order.

Decision and reasons on sanction

In the light of the NMC's revised sanction bid, the panel first reconsidered its decision to proceed today in Ms Chukwu's absence. It considered the potential prejudice Ms Chukwu might suffer by not being able to make representations in the face of her possible removal from the register, balancing it against the public interest in expeditiously concluding these proceedings.

The panel noted that a sanction bid is advisory in nature, and that Ms Chukwu was represented. It considered that her representative should have been aware that misconduct of a dishonest nature may result in a striking-off order, especially where there is no evidence of insight or remediation. It noted that Ms Chukwu, via her representative, had clearly stated she had lost faith in the regulatory process, and concluded that it was highly unlikely that Ms Chukwu would re-engage if the hearing were adjourned. The panel therefore determined to proceed with its decision on sanction.

Having found Ms Chukwu's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Ms Chukwu failed to correct the understanding of the Investigating Committee panel, despite having an opportunity to do so during the hearing and, in particular, whilst the panel was in camera.
- The dishonest conduct had three separate elements: Ms Chukwu's regulatory, employment and disciplinary history.
- Ms Chukwu's dishonest conduct was towards her regulator.

- Ms Chukwu has shown no insight or remediation since the misconduct occurred in 2019.

The panel also took into account the following mitigating features:

- Although Ms Chukwu's dishonest conduct had three separate elements, these took place on a single, isolated occasion. There is no evidence of a pattern of dishonesty.
- Ms Chukwu's conduct was deliberate but not premeditated. It was opportunistic in nature.
- No patients were harmed or placed at risk of harm.

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, an order that does not restrict Ms Chukwu'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 Ms Chukwu'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 Ms Chukwu's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Furthermore, the panel concluded that the placing of conditions

on Ms Chukwu's registration would not adequately address the seriousness of this case and would not meet the public interest.

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

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

The panel was satisfied that Ms Chukwu's dishonest conduct was confined to the 2019 interim order hearing. It noted that it was possible, in principle, for a registrant who has demonstrated insight and shown remorse to remediate dishonest conduct, and that a period of suspension with a review may facilitate this. However, the panel has neither seen nor heard any evidence that indicates Ms Chukwu has accepted the concerns raised in this referral or taken any steps towards remediating her conduct in the two years since she was referred, or indeed over the two days of this hearing. The panel noted Ms Chukwu appeared to place responsibility for her actions onto the NMC, and was of the view that Ms Chukwu's attitude was entrenched. It could therefore not be satisfied that Ms Chukwu would not pose a significant risk of repeating her misconduct.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that dishonesty in and of itself does not warrant removal from the register. However, the panel noted the following excerpt from the SG:

'The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk [of] being removed from the register.'

Nurses, midwives and nursing associates who behaved dishonestly can engage with the Fitness to Practise Committee to show that they feel remorse, that they realise they acted in a dishonest way, and tell the panel that it will not happen again. They can do this in person, through anyone representing them, or by sending information they want the Committee to consider. If they do this, they may be able to reduce the risk that they will be removed from the register.'

The panel considered that Ms Chukwu's dishonesty towards her regulator was at the higher end of the scale. It concluded that the serious breach of the fundamental tenets of the profession evidenced by Ms Chukwu's actions, when combined with her disengagement from the regulatory process and the absence of any insight, remorse or remediation, is fundamentally incompatible with Ms Chukwu 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?*

Ms Chukwu's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Chukwu's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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 Ms Chukwu in writing.

Submissions on interim order

The panel took account of the submissions made by Mr Slack. He submitted that based on the facts found proved, the only interim order that is compatible with the panel's decision on sanction and the public interest considerations identified is an 18 month suspension order.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary 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 to allow time for any appeal to be heard by the High Court.

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

That concludes this determination.