

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

**Substantive Hearing
Monday 21 November 2022 – Wednesday 23 November 2022**

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

Name of Registrant: Justine Denham

NMC PIN 12F0122E

Part(s) of the register: Registered Nurse – Sub part 1
Adult Nursing – 12 October 2012

Relevant Location: Durham

Type of case: Misconduct

Panel members: Michael Murphy (Chair, Registrant member)
Jonathan Coombes (Registrant member)
Christine Nwaokolo (Lay member)

Legal Assessor: Charles Apthorp

Hearings Coordinator: Anya Sharma

Nursing and Midwifery Council: Represented by Anna Leathem, Case Presenter

Denham: Present and represented by Daniel Brown,
Counsel, Royal College of Nursing (RCN)

Facts proved: All

Facts not proved: None

Fitness to practise: Impaired

Sanction: Suspension order (6 months)

Interim order: No order

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Leathem, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of Charge 1, namely in Schedule 4.

The proposed amendment was to amend 'Ibuprofen' in Schedule 4 to read as 'Ibuprofen gel'. It was submitted by Ms Leathem that the proposed amendment would provide clarity and more accurately reflect the evidence.

That you being a registered nurse on the 17th January 2020

1. On the 4th March 2020,
 - (1) You recorded inaccurate entries on the MAR charts of Clients A to D inclusive as set out in Schedules 1 to 4 respectively.
 - (2) You made the entries dishonestly because you knew the entries were inaccurate in that
 - (a) You made the entries before 11.20 am
 - (b) Yet the entries related to events in the MAR chart occurring at noon or at teatime.

Schedule 4 [in relation to Client D]

You recorded

1. Paracetamol as not required at noon and teatime.
2. Clotrimazole cream as not required at noon and teatime.
3. Hypromellose eye drops as not required at noon and teatime.
4. Ibuprofen **gel** as not required at noon and teatime.
5. Tramadol as not required at noon and teatime.
6. Morphine sulphate as not required at noon and teatime.
7. Salbutamol inhaler as not required at noon and teatime.

And in the light of the above, your fitness to practise is impaired by virtue of your misconduct

Mr Brown submitted that he did not oppose the application.

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

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

Decision and reasons on application for hearing to be held in private

At the outset of the hearing, Mr Brown made a request that this case be held in private on the basis that proper exploration of your case involves [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Leathem indicated that she supported the application to the extent that any reference to [PRIVATE] should be heard in private.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

The panel determined to go into private session in connection with [PRIVATE] as and when such issues are raised.

Details of charge (as amended)

That you being a registered nurse on the 17th January 2020

1. On the 4th March 2020,

- (1) You recorded inaccurate entries on the MAR charts of Clients A to D inclusive as set out in Schedules 1 to 4 respectively.
- (2) You made the entries dishonestly because you knew the entries were inaccurate in that
 - (a) You made the entries before 11.20 am
 - (b) Yet the entries related to events in the MAR chart occurring at noon or at teatime.

Schedule 1 [in relation Client A]

You recorded

1. Duloxetine as administered at noon.
2. Liquid paracetamol as administered at noon.
3. Lorazepam recorded as "N" indicating "not required" at noon.

Schedule 2 [in relation to Client B on end of life care]

You recorded

1. Viscotears liquid eye drops as administered at noon.
2. The letter "F" indicating that the client was sleeping at teatime.
3. Glyceryl nitrate as "not required" at noon.
4. "F" indicating that the client was asleep at teatime.
5. Paracetamol as not required at noon.
6. "F" indicating that the client was asleep at teatime.

Schedule 3 [in relation to Client C]

You recorded

1. Paracetamol as not required at noon and 2 tablets administered at teatime.
2. Fostair inhaler as administered at teatime.
3. Morphine sulphate as not required at noon and teatime.
4. Clomitrazone cream as not required at noon and teatime.
5. Glyceryl trinitrate as not required at noon and teatime.
6. Hypromelliose eye drops as administered at teatime
7. "A" entered against macrogol compound indicating a refusal at noon and teatime.
8. Salbutamol inhaler as not required at noon and teatime.
9. On the back of the MAR the provision of PRN paracetamol at 11.30 and after 18.00 hours "with good effect"

Schedule 4 [in relation to Client D]

You recorded

1. Paracetamol as not required at noon and teatime.
2. Clotrimazole cream as not required at noon and teatime.
3. Hypromellose eye drops as not required at noon and teatime.
4. Ibuprofen gel as not required at noon and teatime.
5. Tramadol as not required at noon and teatime.
6. Morphine sulphate as not required at noon and teatime.
7. Salbutamol inhaler as not required at noon and teatime.

And in the light of the above, your fitness to practise is impaired by virtue of your misconduct

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Brown, who informed the panel that you made full admissions to charge 1.

The panel therefore finds charge 1 proved in its entirety, by way of your admissions.

The panel also heard evidence from you under oath.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

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

Ms Leathem identified the specific, relevant standards where the NMC believed your actions amounted to misconduct. She submitted that it is the NMC's view that your actions fell well below the standards expected of a registered nurse and did amount to a breach of the Code.

Ms Leathem submitted that in this case serious misconduct can be found. She submitted that multiple inaccurately recorded MAR charts do represent a serious departure not only from the Code but also a deviation from basic standards of nursing.

Ms Leathem informed the panel that Mr 1 is one of the witnesses that were called by the NMC to give evidence by way of his witness statement. She submitted that whilst Mr 1 is not an expert and his evidence on the topic was a mere opinion, he is a registered nurse. Ms Leathem submitted that what Mr 1 stated in his witness statement is relevant, in that recordkeeping is one of the most basic of nursing responsibilities and is something learnt at university. Recordkeeping is the same basic procedure for nurses everywhere.

Ms Leathem submitted that you would have known precisely what you were doing and that you have accepted that you acted dishonestly. She submitted that whilst the falsely recorded MAR charts did not cause any harm to any patients, this is only because this was picked up early by staff at the Home due to the daily 'flash' meetings where the MAR charts are looked at.

Ms Leathem submitted that your actions represented a risk of harm to clients in your care. She submitted that your actions were neglecting these clients, affecting their health and their comfort. Ms Leathem submitted that it is that health and safety of clients/patients that is an essential component of high-quality nursing care. She submitted that the practice of safe medication management is a fundamental part of this. Ms Leathem submitted that your actions provided an inaccurate and misleading account of care that would breach several policies in place to protect clients from harm and expose these clients to a real risk of harm.

The panel have heard evidence from you in relation to the level and lack of support that you felt that you had. Ms Leathem submitted that this is insufficient to detract from the seriousness of your actions. She submitted it is highly relevant that during cross examination, you accepted that what was said in your disciplinary hearing was that you had not asked for support in your disciplinary hearing.

Ms Leathem submitted that the lack of honesty must be considered serious and that the entries in the MAR chart were calculated. She submitted that the number of errors coupled with entries where you have specified the effect of the medication, whether a client is asleep or refused medication is not a simple error that can be explained. She further submitted that this is not a matter of missing or not giving the medication but is a deliberate intentional record. She submitted that it is insufficient for you to not have an explanation for this.

Mr Brown submitted that misconduct is a matter for the panel's judgement. He submitted that it was made clear at the outset of this hearing that you admit that your actions amounted to professional misconduct.

Mr Brown submitted that this is a case of a nurse who fully understands why honesty and integrity are important and fully accepts that on this occasion on one day you failed to meet these standards.

Mr Brown submitted that when the issues were raised, you immediately accepted that you had done wrong. He submitted that you have always accepted that your actions were wrong and fully understand the reasons why these proceedings have been brought. Mr Brown submitted that nothing that you have said today is intended to suggest otherwise, but rather to put in context matters that may have been affecting you or your judgement at the time. He submitted that it is important for the panel to consider these issues as there is a spectrum of dishonest conduct, with some being more serious than others.

Mr Brown submitted that you do not have deep-seated attitudinal issues or that you are a fundamentally dishonest nurse. He submitted that you made a serious lapse of judgement on one occasion.

Submissions on impairment

Ms Leathem moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Leathem submitted that whilst impairment is accepted by you on public interest grounds, the panel should address both grounds of public protection and public interest in its consideration.

Ms Leathem referred the panel to Dame Janet Smith's "test" and submitted that all four limbs of the test are engaged in this case. She submitted that the dishonesty in this case is serious and calculated. She submitted that mistakenly recording when a client has received medication when they have not or not recording medication when administered whilst serious are less so when considered in conjunction with the more deliberate entries of the client being asleep or having reacted to medication 'with good effect'. Ms Leathem submitted that it is those aspects that make the dishonesty aspect very serious in respect of public protection and also public interest.

Ms Leathem submitted that it is accepted that your actions did not take place over a sustained period of time, rather solely on 4 March 2020. She submitted however that this dishonesty is directly linked to your practice and was serious notwithstanding that it only took place on one date in particular.

Ms Leathem submitted that it is generally accepted that issues in regard to clinical nursing practice are easier to address, such as poor record keeping. You have provided

certificates in relation to this. She submitted that on the other hand concerns in relation to dishonesty are much more difficult to remediate. She submitted that your conduct was so serious that the panel would need to consider whether your insight is proportionate to the seriousness of the dishonesty.

Ms Leathem submitted that it is a matter for the panel whether your insight is sufficient, taking into account your remediation, reflective piece and training courses and certificates. She submitted that what you have provided predominately relates to recordkeeping and no evidence of any specific course in relation to the honesty and integrity requirement. You gave evidence that you had read the Code and had also read journals and RCN documents.

Ms Leathem submitted that your case does involve a fundamental concern about your trustworthiness as a nurse. You knowingly falsified records and in effect denied clients their prescribed medication. The evidence before the panel also suggested that you were aware of the principles of safe medication practice at the time and that you did not follow this. Ms Leathem submitted that your actions did expose several clients to a real risk of harm and distress. She submitted that the panel may be of the view that the risk of repetition is low given that there have been no issues with your clinical practice since these matters arose in 2020. There are no concerns raised by your current employer. Ms Leathem submitted that there were however a significant number of incorrect entries on 4 March 2020. She submitted that the panel would need to be satisfied that you can act differently when exposed to similar circumstances such as an emergency or family circumstances.

Ms Leathem submitted that your actions do go to the ethical core of the nursing profession. She submitted that the panel may find it highly unlikely that the conduct will be repeated on the basis that the incident took place on one day only, but there is serious reputational damage to the nursing profession caused by your misconduct. A member of the public would expect a registered nurse to be honest about the recording of medication administration. This violates the trust placed in nurses by the public, patients and colleagues.

Ms Leathem submitted that a fully informed member of the public would be seriously concerned by your professional conduct and dishonesty if a finding of impairment was not made.

Mr Brown submitted that the panel should be satisfied that this matter is highly unlikely to be repeated. [PRIVATE] Mr Brown submitted that there was also the emergency incident on 4 March 2020. [PRIVATE] He submitted that when looking at these factors, [PRIVATE] there are some issues about the question of support that was available to you at the time.

Mr Brown submitted that what is more important is what you say that you would do now and what practical steps you have taken and will take in the future to avoid this issue arising again. He submitted that your witness statement deals with this and referred the panel to the relevant paragraphs. [PRIVATE]

Mr Brown submitted that these are practical and tangible steps; [PRIVATE]

Mr Brown submitted that for these reasons there is insight in this case, there is remorse, admissions have been made by you at an early stage and you accept misconduct. He submitted that you accept that it is right and proper that the NMC acknowledges that dishonest record keeping is not acceptable, and for this reason you accept that a finding of impairment on public interest grounds is required. Mr Brown submitted that any finding of impairment should be limited to this on the basis that that there is no risk of repetition in this case.

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 *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons 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.'

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

10 Keep clear and accurate records relevant to your practice This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records. To achieve this, you must:

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

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.1 take measures to reduce as far as possible, the likelihood of mistakes, near misses, harm and the effect of harm if it takes place

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel noted that the charge in this case is serious and that your conduct falls short of what is proper and what would be expected of a registered nurse by the public in the circumstances of this case. The panel considered that you have made a full admission to the charge against you and that you accept your dishonesty in falsifying the incorrect entries on the MAR charts for clients. The panel was therefore of the view that the charge in this case is of a significant and serious enough nature to warrant a finding of misconduct.

The panel found that your 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, your 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 physical and emotional harm as a result of your misconduct. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be severely undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that at the outset of the hearing you made full admissions to the charge against you. The panel also took into account that at the time of the incident on 4 March 2020 you admitted what you had done once you were asked, you admitted it at the disciplinary meeting on 16 March 2020 and that you had informed

the NMC in September 2021 that you will be making full admissions. The panel also considered that you admitted the charge when you gave oral evidence under oath. You demonstrated to the panel that you have a developed understanding of your actions and their impact at the time of the incident and what you would do differently in the future if you found yourself in a similar situation. The panel also noted your good character and that this is the first time a regulatory concern has been raised regarding your nursing practise

The panel was satisfied that the misconduct in this case is capable of being remedied. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account your detailed reflective piece and witness statement in which you acknowledge the seriousness of your actions and your expressions of remorse for what you had done. You also mention in your reflective statement the impact of your actions on the reputation of the nursing profession and the public. [PRIVATE] The panel also took into account that you have addressed the risk as demonstrated through the training certificates and competencies that you have completed to better your nursing practise and the positive testimonials from your current employer.

The panel was of the view that based on the evidence before it of your developed insight and remediation of your nursing practice that you would not bring the nursing profession into disrepute in the future and would not be liable to breach one of the fundamental tenets of the nursing profession. The panel was of the view that this was a one-off incident that you have always fully accepted your responsibility and the impact of your dishonest conduct. The panel was therefore of the view that it was highly unlikely that you would act dishonestly in the future.

The panel took into account that its role is to consider current impairment at this point in time. It was of the view that given your developed insight into your nursing practice, the admissions that you have made early on, your accepting of the dishonesty charge against you and the additional training that you have completed that you do not represent an ongoing risk of harm to patients. The panel noted that you have been

practising as a nurse for the past two years without any concerns and that you have taken steps to remediate in relation to your management of medications.

The panel therefore decided that a finding of impairment is not 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 determined that a finding of impairment on public interest grounds is required as the charges are very serious and amounted to serious breaches of the Code. The panel took into account that you did put patients at a risk of harm in the past and that you did breach the fundamental tenets of the nursing profession and brought the nursing profession into disrepute in the past as a result of your dishonesty. The panel considered that a fully informed member of the public would be concerned given the serious and dishonest nature of the charge if a finding of impairment was not made.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months. The effect of this order is that the NMC register will show that your registration has been suspended.

In reaching this decision, the panel has had regard to all the evidence that has been provided in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel also had careful regard to the NMC Guidance on considering sanctions for serious cases. The panel accepted the advice of the legal assessor.

Submissions on sanction

Ms Leathem informed the panel that in the Notice of Hearing, dated 17 October 2022, the NMC had advised you that it would seek the imposition of a striking off order if the panel found that your fitness to practise currently impaired. During the course of the hearing, the NMC revised its proposal and submits that a 12-month suspension order is more appropriate in light of the panel's findings.

Ms Leathem submitted that this is a clear case of dishonesty and there is always a risk of being struck off, albeit temporarily, where dishonesty is proved. She submitted that the public interest concerns are always engaged with dishonesty and the panel will have to consider that the public would be concerned due your dishonesty, and the breach of trust and confidence placed in you by your clients and colleagues.

Ms Leathem submitted that whilst the panel found that this was a one-off incident that took place in one day, the number of incorrect entries, namely 22, on this day make it significant. She submitted that you stating that one of the medications given to one of the clients had 'good effect' on the patient makes the dishonesty quite serious. Ms Leathem submitted that it has not been clear whether this was a means to save time, and aside from the circumstances put forward by you that were accepted by the panel, including [PRIVATE], you could not explain why you had done this.

Ms Leathem submitted that whilst the panel have not found impairment on public protection grounds, your actions at the time did present a risk of harm to patients. She submitted that the dishonesty occurred in a clinical setting.

Ms Leathem submitted that it is the NMC's view that a striking-off order is no longer proportionate given the findings of the panel.

Ms Leathem submitted that this is a case where you made timely admissions, you accepted dishonesty, the panel have found that there is no risk of the conduct being repeated, you have shown insight and efforts to strengthen your practice and there is an acknowledgement of the risk of harm that your colleagues and clients were exposed to at the time of the incident. Ms Leathem submitted that this is not a case of deep-rooted dishonesty or deep-seated attitudinal issues with the panel finding it to be one-off incident.

Ms Leathem submitted that in relation to aggravating features, there were multiple falsification of records, that this was potentially done by you to save time, the dishonesty took place in a clinical setting and the potential to cause harm at the time of the incident.

Ms Leathem submitted that in relation to mitigating features, [PRIVATE], the incident did occur on one date, your early admissions, your efforts to strengthen your nursing practice and no relevant fitness to practise history.

Ms Leathem submitted that this is not a case where the panel can take no action as dishonesty concerns are always and should always be considered serious. She submitted that to take no action would not address the public interest.

Ms Leathem submitted that in this case the misconduct was not at the lower end of the spectrum as the dishonesty occurred in a clinical setting. She submitted that a caution order would therefore not uphold the proper standards to maintain public confidence in the nursing profession and in the NMC as a regulator.

Ms Leathem submitted that the dishonesty identified in this case would not be easily addressed with a conditions of practice order. She submitted that the panel made a finding of no ongoing risk to the public and that you had taken steps to remediate the concerns.

Ms Leathem submitted that it is the NMC's case that the impairment found does warrant an erasure from the NMC register, albeit temporarily. She submitted that a suspension

order would mark the seriousness of your actions and promote and protect the public confidence in the profession. She submitted that a striking off order would not be proportionate or appropriate.

Ms Leathem submitted that the case of *Parkinson v NMC [2010] EWHC 1898 (Admin)* is relevant in relation to why a suspension order is the most proportionate order. She submitted that the facts in this case were different as the dishonesty related to a registrant claiming sick pay from one employer when he was working for a second employer over an extended period of time. She submitted that this case can be further differentiated from that case as the registrant did not attend his hearing, did not make admissions and did not show remorse or apologise.

Ms Leathem submitted that the following extract from *Parkinson* is relevant.

Mr Justice Mitting said the following in relation to the panel's decision on sanction:

'It was stern certainly, but it was properly stern because, as the panel noted, one of its tasks is to maintain public confidence in the professions. A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'

Ms Leathem submitted that Mr Justice Mitting's judgement demonstrates that dishonesty is always treated seriously and that a nurse will always be at severe risk of having his or her name erased from the NMC register. She submitted that Mr Justice Mitting identifies those factors to consider that might justify a striking off order over a suspension. Ms Leathem submitted that if a nurse however does appear before a panel, does show remorse, and accepts dishonesty and an undertaking that there will be no

repetition, then there is a small chance of persuading the panel to adopt a lenient outcome of suspending for a period rather than striking off.

Ms Leathem submitted that anything less than a suspension order would not be proportionate to mark the seriousness of the dishonesty. She submitted that the public interest element is only satisfied by a suspension order and nothing less, nothing more.

The panel also bore in mind Mr Brown's submissions. Mr Brown submitted that the facts in the case of Parkinson referred to the panel by Ms Leathem are significantly different from those of this case. He submitted that on the facts, the case of Parkinson has no similarity to this case as you attended the hearing, have shown remorse, you accept the dishonesty, and it was a one-off incident.

Mr Brown submitted that the NMC's submission that a nurse who admits dishonesty only has a small chance of avoiding strike-off is not the correct approach and not the law. He submitted that the correct approach is as in other cases where the panel starts with the least restrictive sanctions and works in ascending order of seriousness until an appropriate and proportionate sanction is reached.

Mr Brown submitted that there is a spectrum of dishonesty, and in this case it is towards the lower end of the spectrum as the dishonesty occurred on a single day in a long career. He submitted that the panel found that you do not represent an ongoing risk of harm to patients, which is an important finding when it comes to balancing your interests with the interests of the public and the need to protect the reputation of the nursing profession.

Mr Brown submitted that the NMC changing its position of a striking-off order to a 12-month suspension order demonstrates that this is not a case where public confidence can only be maintained by a striking-off order.

Mr Brown referred the panel to the NMC Sanctions Guidance. He submitted that the fitness to practise committee does have the discretion to take no further action and impose no sanction immediately after it is decided that a nurse, midwife or nursing

associate fitness to practise is impaired. The panel will only use its discretion in rare cases and needs to explain its decision very clearly.

Mr Brown submitted that the reason he invites the panel to consider taking no action in this case is that the finding was made that you do not represent an ongoing risk of harm to patients. The panel have also made findings about the level of insight shown. He submitted that the panel may take the view that a finding of impairment is such that in the circumstances of this case that public interest is satisfied and that the misconduct has been marked by the finding of impairment.

Mr Brown submitted that if the panel were to be against taking no action, a caution order would be appropriate. He submitted that a caution order would mark the wrongdoing and would therefore address the public interest.

Mr Brown submitted that there are no particular conditions that arise from the panel's determination, and that if the panel were to consider suspension, the panel should consider not only the public interest in declaring and upholding proper nursing standards. He submitted that there is also public interest in a good nurse being able to practise for the benefit of patients and of the public. Mr Brown submitted that when considering the circumstances of this case and the public interest in returning an otherwise good nurse back to practise, if the panel were to conclude that a suspension order is required, the shortest period of suspension should be imposed to mark the wrongdoing in this case.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the NMC Sanctions Guidance (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:

- The falsification of and failure to maintain medication administration records
- A potential risk to the patients as a direct result of your actions at the time of the incident
- An abuse of a position of professional trust

The panel also took into account the following mitigating features:

- Your early acceptance of the charge on the day of the incident, 4 March 2020
- Your understanding of the problem and your insight into your wrongdoing
- [PRIVATE]
- Your previous good character and nursing history

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case and the dishonesty found. The panel was of the view that your dishonesty was towards the lower end of the spectrum. The panel however noted that dishonesty of any sort is serious particularly in light of the public interest issues identified. The panel therefore 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, the dishonesty charge and the public interest issues identified, an order that does not restrict your nursing practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum given the element of dishonesty in this case and that a caution order would be inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *...*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical, workable or measurable conditions that could be formulated or applicable, given the dishonesty aspect of the charge in this case. The panel determined that the misconduct identified in this case was not something that can be addressed through retraining or supervision.

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

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 in this case, the misconduct was in line with the above guidance and not fundamentally incompatible with remaining on the register.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the level of insight, the strengthening of your practice and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order may cause you. However, this is outweighed by the public interest in this case.

The panel considered the public interest of returning a good nurse to practice and did recognise your previous unblemished nursing history of ten years. The panel was however of the view that this order is necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse. The panel noted that a well-informed member of the public would be concerned if you were permitted to practise as a nurse without an appropriate restriction.

The panel determined that a suspension order for a period of 6 months was proportionate and appropriate in this case to mark the seriousness of the misconduct and meet the public interest.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision. In this respect it found your fitness to practise impaired on the grounds of public interest.

In accordance with Article 29 (8A) of the Order the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review.

Interim order

As the suspension order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interests until the suspension sanction takes effect. 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 Leathem. She submitted that an interim suspension order for a period of 18 months would be appropriate based on the panel's decision in respect of public interest. Ms Leathem submitted that in fairness to you, the bar is set high in considering an interim order on public interest grounds.

Ms Leathem submitted that it would be incompatible for the panel not to impose any other interim order given the panel's previous findings.

The panel also took into account the submissions of Mr Brown. Mr Brown submitted that you have not previously been subject to an interim order restricting your practice. He submitted that there has been no new information introduced to alter the balance of risk for an interim order at this point.

Mr Brown submitted that the panel 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 is in your own interests. He submitted that given the panel's previous findings, the grounds of public protection and of your own interest cannot apply.

Mr Brown submitted that public interest is the only ground which can be considered by the panel when determining whether an interim order is necessary. He submitted that there is no basis for an interim order as the public interest in this case is served by the suspension order which has been made by the panel and that nothing else necessitates the requirement for an interim order.

Mr Brown submitted that the NMC's application for an interim suspension order has been misconceived and should be rejected by the panel. He submitted that you have not been suspended by the NMC and that there is a high threshold in relation to imposing an interim order on public interest grounds. Mr Brown submitted that as there is no risk of harm identified, an interim order is not necessary.

Decision and reasons on interim order

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

The panel decided to make no interim order.

The panel was satisfied that an interim order is not necessary based on the public interest in this case.

The panel took into account that you have been working as nurse with no concerns for the past two years with no interim order imposed on your practice by the NMC. The

panel considered that you notified the NMC in September 2021 that you would be making full admissions to the charge. The panel noted that it is not aware of any current interim order restrictions on your nursing practice.

The panel had regard to the seriousness of the facts found proved and its reasons set out in its decision for the substantive suspension order in reaching the decision to impose an interim order. The panel was of the view that to impose an interim order would be inconsistent with the panel's previous findings as no public protection issues have been identified. The panel took into account that there is a high bar in regard to public interest and that the seriousness of the case is marked by the six-month substantive suspension order.

That concludes this determination.

This will be confirmed to you in writing