

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

**Substantive Hearing
Monday 17 October – Thursday 20 October 2022**

Virtual Hearing

Name of registrant: Sarah Serwaah Major

NMC PIN: 06H0745E

Part(s) of the register: Registered Midwife (27 June 2008)

Relevant Location: Kent

Type of case: Determination by other health or social care organisation and misconduct

Panel members: Andrew Macnamara (Chair, lay member)
Catherine Cooper (Registrant member)
David Hull (Lay member)

Legal Assessor: William Hoskins

Hearings Coordinator: Jennifer Morrison

Nursing and Midwifery Council: Represented by Ben Edwards, Case Presenter

Mrs Major: Not present and unrepresented

Facts proved: Charges 1, 2b, 3 (in relation to charge 2b only)

Facts not proved: Charge 2a

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Major was not in attendance and that the Notice of Hearing letter had been sent to Mrs Major's registered email address on 25 August 2022.

Mr Edwards, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ('the Rules').

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegations, the time, dates and venue of the hearing and, amongst other things, information about Mrs Major's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Major has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Major

The panel next considered whether it should proceed in the absence of Mrs Major. It had regard to Rule 21 and heard the submissions of Mr Edwards, who invited the panel to continue in the absence of Mrs Major. He referred to a number of emails between Mrs Major and the NMC from 16-27 September 2022 regarding her attendance at the hearing. Mrs Major had informed the NMC that [PRIVATE], and on 16 September, stated the following:

'[PRIVATE] has come as a shock to me and I do not think I will ever be able to participate in the hearing even if it's postponed.'

In response to a request for clarification from the NMC, Mrs Major stated:

'I do not feel it is right for me to be absent at my hearing, and I also do not want to participate in any hearing. [PRIVATE].'

Finally, on 27 September 2022, Mrs Major stated:

'1. I will not be able to participate in the hearing scheduled for the 17th to the 21st of October 2021
2. I can not give my consent, I do not want to be part of this hearing, [PRIVATE] and I want nothing to do with the case anymore
3. I do not have any written submission, I do not intent to contact the NMC Ghana regarding this case again
4. I do not want anything to do with the case anymore, this case has caused me so much and I do not want anything to do with it again.
I hope this will be considered, [PRIVATE], this has come as a shock and I want to put this case behind me.'

Mr Edwards submitted that whilst Mrs Major's earlier emails contained "mixed messages", her email of 27 September made it clear that she would not be participating in this hearing. He submitted that the NMC had asked specifically whether Mrs Major would like the hearing to be postponed, and if so, which dates might be suitable; however, Mrs Major did not address this, and stated she wanted nothing more to do with this case. Mr Edwards submitted that this was an indication that a postponement would serve no useful purpose.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised with the utmost care and caution.

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

- Mrs Major has [PRIVATE], although she could conceivably attend a hearing in the future. However, Mrs Major was offered the possibility of a postponement, but appears to have explicitly rejected that option. She has made it clear that she wants nothing further to do with these proceedings. Therefore, it is highly unlikely that adjourning would secure Mrs Major's attendance at some future date;
- One witness has attended today to give live evidence;
- Not proceeding may inconvenience the witness, her employer, and the clients who need her professional services;
- Given the seriousness of the matters before the panel, there is a strong public interest in the expeditious disposal of the case;
- The charges relate to events that occurred in 2019; and
- Further delay may have an adverse effect on the ability of the witness to accurately recall events.

There is some disadvantage to Mrs Major in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Major at her registered email address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can

explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Major's decisions to absent herself from the hearing, waive her rights to attend and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Background

On 23 July 2019, the NMC received a referral from the Nursing and Midwifery Council of Ghana (NMC Ghana), the regulatory body of nurses and midwives in Ghana, dated 20 June 2019. The referral stated that the NMC Ghana had sanctioned Mrs Major on 26 April 2019 following findings made against her relating to the care of a woman and her baby during the perinatal period in December 2017. At the time of the referral, Mrs Major had been appointed to the post of community midwife at East Kent Hospitals University NHS Foundation Trust ('the Trust'). The Trust alleged that Mrs Major failed to inform it that she had been subject to regulatory proceedings in Ghana, or that she had been sanctioned by the NMC Ghana.

Details of charges (as amended)

That you, a registered midwife,

1. On 26 April 2019, received a finding of unprofessional conduct and were made subject to sanctions by NMC Ghana;

2. Between February and September 2019, failed to disclose to your potential employer that you were:
 - a. under investigation by NMC Ghana and/or;
 - b. made subject to regulatory sanctions by NMC Ghana;
3. Your actions as set out in charge 2a and/or 2b were dishonest in that you intended to conceal the investigation/sanctions from your employer.

AND in light of the above, your fitness to practise is impaired by reason of the findings of another regulatory body responsible for the regulation of nurses and midwives in respect of charge 1 and your misconduct in respect of charge 2 and 3.

Decision and reasons on application to admit written statement of Ms 1 into evidence

Mr Edwards made an application under Rule 31 to allow the written statement of Ms 1 into evidence. He submitted that Ms 1 was an NMC employee whose evidence was simply a chronology of the NMC's attempts to obtain further information from the NMC Ghana.

The panel noted that Ms 1's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement ... is true to the best of my information, knowledge and belief*'. It was signed by Ms 1.

The panel considered that Ms 1's involvement in the case extended to obtaining information from the NMC Ghana. It considered it unlikely that Ms 1 would be able to comment any further on her evidence, for example, explaining why no further information was forthcoming from NMC Ghana.

The panel considered whether Mrs Major would be disadvantaged by the reliance on Ms 1's written statement alone. It considered that Mrs Major had been provided with a copy of Ms 1's statement, and, as the panel has already determined that Mrs Major had chosen to voluntarily absent herself from these proceedings, she would not be in a position to cross-examine Ms 1 in any event.

The panel determined that it would be fair to accept the written statement of Ms 1 into evidence, and would give what it deemed appropriate weight once it had heard and evaluated all the evidence before it.

Decision and reasons on application to amend the charges

Mr Edwards made an application to amend the wording of the stem of charge 2 as follows:

2. *'Between ~~April~~ February and September 2019, failed to disclose to your **potential** employer that you were.'*

Mr Edwards submitted that it was clear from the evidence that Mrs Major had applied to the Trust in February 2019, and that she did not start working for the Trust until September 2019. He submitted that the amendments were necessary to accurately reflect the evidence, and the substance of the charges had not changed.

The panel accepted the advice of the legal assessor.

The panel granted the application. It determined that the proposed amendments were necessary to accurately reflect the evidence, and did not represent a change to the substance of the charges. The panel found that neither party would be prejudiced by the amendments being allowed.

On the same basis, the panel, of its own volition, determined to amend the paragraph describing the heads of impairment as follows:

*‘AND in light of the above, your fitness to practise is impaired by reason of the findings of another regulatory body responsible for the regulation of nurses **and midwives** in respect of charge 1 and your misconduct in respect of charge 2 and 3.’*

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case, together with the submissions made by Mr Edwards. It accepted the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Mrs Major.

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

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

- Ms 2: Head of Midwifery and Gynaecology,
East Kent Hospitals University NHS
Foundation Trust

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

Charge 1

1. On 26 April 2019, received a finding of unprofessional conduct and were made subject to sanctions by NMC Ghana;

This charge is found proved.

In reaching this decision, the panel considered the referral letter dated 20 June 2019 and the letter dated 26 April 2019 from the NMC Ghana to Mrs Major, which clearly established that Mrs Major had been made subject to sanctions by the NMC Ghana. It also considered the documentation of Mrs Major's appeal against the NMC Ghana's findings, and noted that it did not appear at any point that Mrs Major had disputed that sanctions against her had been imposed.

Charge 2a

2. Between February and September 2019, failed to disclose to your potential employer that you were:
 - a. under investigation by NMC Ghana;

This charge is found NOT proved.

In reaching this decision, the panel considered a number of letters from the NMC Ghana to Mrs Major about her case. It accepted that on 12 April 2018, when the NMC Ghana had asked Mrs Major to provide her patient documentation, Mrs Major may not have been aware at that point that her practice was under investigation. However, it was satisfied that it was more likely than not that by 26 April 2019, the date on which the NMC Ghana informed Mrs Major that she had been made subject to sanctions, Mrs Major would have known that her practice had been under investigation.

In this respect, the panel considered Mrs Major's appeal to the High Court of Ghana, which referred to *'hearings and enquiry into the complaint lodged against our Client'*. This, and additional documentation dated from before 26 April 2019 shows that other activities relating to a disciplinary hearing were taking place. Furthermore, the panel considered that Mrs Major's appeal argued the merit of the NMC Ghana's findings, and did not indicate that Mrs Major was surprised to learn of the proceedings or that she had been under investigation.

However, the NMC has not produced any evidence to show that Mrs Major was obliged to inform her potential employer that she was under investigation.

The panel noted that Mrs Major had ticked 'no' in response to the following question on her Trust application form:

'Are you currently subject to a fitness to practise investigation and/or proceedings of any nature by a regulatory or licensing body in the UK or in any other country?'

The panel was not satisfied that on the balance of probabilities, at the time of application, Mrs Major was aware that she was subject to an investigation and was obliged to inform her employer as such. It could find no obligation on her that she should inform them after her application had been submitted.

Charge 2b

2. Between February and September 2019, failed to disclose to your potential employer that you were:
 - b. made subject to regulatory sanctions by NMC Ghana;

This charge is found proved.

In reaching this decision, the panel considered that the 26 April 2019 letter from the NMC Ghana had clearly informed Mrs Major that she had been made subject to regulatory sanctions, against which she instructed solicitors in Ghana to prepare an appeal. It concluded that from 26 April 2019, Mrs Major had been aware that sanctions had been made against her. The NMC had confirmed with the NMC Ghana that the sanctions were still in place on 24 April 2020, indicating that the appeal was either ongoing or had not been successful.

The panel found that the NMC *Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates* [2015] ('the Code') obliged Mrs Major to inform both the NMC and her potential employer that she had been made subject to sanctions:

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

And:

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

The Code also states:

'When telling your employers, this includes telling (i) any person, body or organisation you are employed by, or intend to be employed by, as a nurse, midwife or nursing associate.'

The panel noted that Mrs Major had ticked 'no' in response to the following question on her Trust application form:

'Have you ever been removed from the register, or have conditions or sanctions been placed on your registration, or have you been issued with a warning by a regulator or licensing body in the UK or in any other country?'

The panel considered that although Mrs Major had not been made subject to sanctions at the time of application, she was aware that sanctions had been imposed on or after 26 April 2019. It saw no evidence that Mrs Major had informed either the NMC or the Trust that she had been made subject to sanctions.

Charge 3

3. Your actions as set out in charge 2a and/or 2b were dishonest in that you intended to conceal the investigation/sanctions from your employer.

This charge is found proved in relation to charge 2b only.

The panel found that on the basis of its findings of Mrs Major's knowledge of the facts at the time, there was no legitimate reason for Mrs Major not to disclose the NMC Ghana's findings against her. Mrs Major could not say that she forgot or that her failure to disclose was accidental, as she was heavily engaged in the proceedings at the time, and they would have been at the forefront of her mind. The panel considered that Mrs Major would have been well aware of the consequences of disclosing the proceedings, and concluded that she intended to conceal the NMC Ghana investigation and sanctions from the Trust. The panel found that this amounted to dishonest conduct by the standards of ordinary people.

Fitness to practise

Having reached its determination on the facts of this case, the panel then considered whether, on the basis of the facts found proved, Mrs Major's fitness to practise is currently impaired with respect to charge 1 by reason of a determination by another health or social care organisation. With respect to charges 2b and 3, the panel considered whether the facts found proved amount to misconduct, and if so, whether Mrs Major'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; therefore, it has exercised its own professional judgement.

With respect to charges 2b and 3, 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, Mrs Major's fitness to practise is currently impaired as a result of that misconduct. The panel had regard to the terms of the Code in reaching its decision.

Submissions on misconduct

With respect to charges 2b and 3, Mr Edwards submitted that Mrs Major's actions amounted to misconduct. He submitted that Mrs Major had breached paragraphs 20.1, 20.2, 20.3, 20.8, 23.3, and 23.4 of the Code, and referred the panel to the cases of *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311 and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Edwards submitted that the NMC Ghana's findings directly relate to Mrs Major's midwifery practice in the UK and her continued ability to practise. He submitted that it was incumbent on Mrs Major to inform the Trust of the sanctions on her practice in April 2019, yet she failed to do so until nearly a year later.

Mr Edwards submitted that Mrs Major's misconduct was so serious that trust and confidence in the midwifery profession and in the NMC as its regulator had been undermined.

Submissions on impairment

Mr Edwards addressed the panel on the need to have regard to protecting the public and upholding the wider public interest. This included declaring and upholding proper standards of conduct and performance, and maintaining public confidence in the midwifery profession and in the NMC as a regulatory body.

Mr Edwards submitted that Mrs Major had shown a complete disregard and lack of respect for the NMC Ghana proceedings, and the UK NMC as well. He submitted that Mrs Major continued to practise in Ghana even after she was suspended, which shows a lack of insight into the seriousness of the matter, and reflects an attitudinal concern.

Mr Edwards submitted that the only reason Mrs Major eventually told the Trust about the sanctions imposed by the NMC Ghana was because she had been suspended by the UK NMC, and had no choice but to do so. He submitted that had the UK proceedings not happened, she may have continued to deceive the Trust. With reference to *Cohen v GMC* [2008] EWHC 581 (Admin), Mr Edwards submitted that Mrs Major had not reflected on the findings and how they related to her care of the patient and her baby, and she sought to blame others for the position she was in. He submitted that such serious attitudinal concerns were extremely difficult to remediate, and Mrs Major had demonstrated no remediation. Therefore, Mr Edwards submitted that it was highly likely that her dishonest behaviour would be repeated, placing patients at a real risk of harm.

Mr Edwards submitted that all four limbs of the 'test' endorsed in *CHRE v NMC and Grant* [2011] EWHC 928 (Admin) were engaged.

Mr Edwards submitted that the public would expect a finding of impairment in these circumstances, and that a failure to do so would undermine public confidence in the profession and in the NMC.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

The panel found that Mrs Major's actions did fall significantly short of the standards expected of a registered nurse or midwife, and amounted to breaches of the following paragraphs of the Code:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to.'

'Cooperate with all investigations and audits

To achieve this, you must:

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

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

'When telling your employers, this includes telling (i) any person, body or organisation you are employed by, or intend to be employed by, as a nurse, midwife or nursing associate; and (ii) any person, body or organisation with whom you have an arrangement to provide services as a nurse, midwife or nursing associate.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel found that Mrs Major's actions in charges 2b and 3 were significant departures from the standards of conduct and performance expected of a registered midwife and amounted to serious misconduct.

The panel found that Mrs Major's failure to declare to her employer that she had been made subject to sanctions by the NMC Ghana frustrated her regulatory body in the UK from undertaking its primary duty to protect the public. Furthermore, her employer was denied the ability to undertake a valid risk assessment in relation to her employment, which could have placed patients at a real risk of harm. The panel heard evidence that Mrs Major's dishonesty continued for a considerable period of time, and heard nothing to suggest that Mrs Major would have eventually disclosed the sanctions of her own volition.

The panel found that fellow registered practitioners would find Mrs Major's conduct deplorable. The regulatory process can only protect the public if practitioners are candid about sanctions on their practice. It found that Mrs Major's actions were liable to have a corrosive effect on public confidence in the profession, and amounted to nothing short of serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if, as a result of the findings of another regulatory body and the misconduct, Mrs Major's fitness to practise is currently impaired.

Midwives 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 midwives with their lives and the lives of their loved ones. To justify that trust, midwives 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 found that all four limbs are engaged.

With respect to charge 1, the panel found that in principle and in practice, the concerns leading to the imposition of sanctions by the NMC Ghana may have been remediable. However, the panel noted there was only evidence of very limited insight and remorse from Mrs Major, and these appeared to have developed at a late stage. Additionally, without any evidence of strengthening of practice in relation to the NMC Ghana's findings, the panel has concluded that Mrs Major's fitness to practise is impaired on public protection grounds and in the wider public interest.

With respect to charges 2b and 3, the panel found that Mrs Major has shown little to no remorse or insight into her behaviour, or acknowledged that her conduct was dishonest. It considered that dishonesty is more difficult to remediate, and requires engagement from a registrant to show that she has or would act differently in the future should a similar situation arise. The panel has heard no evidence to suggest that the risk of repetition has been diminished.

The panel found that Mrs Major's misconduct could have placed patients at a real risk of harm, and in the absence of any evidence that this misconduct will not be repeated, the panel determined that Mrs Major's fitness to practise is impaired on the grounds of public protection.

Mrs Major's conduct has breached fundamental tenets of the midwifery profession, namely honesty and integrity, and therefore has brought its reputation into disrepute. The panel has borne in mind the overarching objectives of the NMC: to protect, promote and maintain the health, safety, and wellbeing of the public and patients, and to uphold the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions, and upholding standards of proper conduct and performance for members of those professions.

The panel found that public confidence in the midwifery profession would be seriously undermined if a finding of impairment were not made in this case. It determined that a finding of impairment is also in the wider public interest.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Major off the register. The effect of this order is that the NMC register will show that Mrs Major 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 to the NMC's published guidance on sanction ('the SG'), taking particular consideration of the guidance on serious cases. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Edwards informed the panel that in the Notice of Hearing dated 25 August 2022, the NMC had advised Mrs Major that it would seek the imposition of a six-to-12-month suspension order if it found Mrs Major's 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 Edwards submitted that dishonesty is a very serious charge, and strikes at the heart of the midwifery profession. He submitted that the public and fellow practitioners expect midwives to act with honesty and integrity at all times.

Mr Edwards proposed the following aggravating factors:

- Mrs Major had been made subject to a three-year suspension by the NMC Ghana and failed to disclose it to her UK employer.
- Her actions brought the NMC and the profession into disrepute.
- Mrs Major had complete disregard for the NMC Ghana's findings and continued to work in Ghana despite the sanctions that had been imposed.

- Her failure to declare the sanctions to her UK employer frustrated her UK regulatory body in its duty to protect the public. Her employer was denied the ability to undertake a risk assessment, which could have placed patients at a real risk of harm. Public confidence in the profession and in the NMC as its regulator is undermined.
- Mrs Major's lack of candour and respect for the Ghanaian regulatory process, as well as her willingness to deceive the NMC and her employer reflect a lack of understanding of the serious nature of the charges she faced in Ghana, as well as deep-seated attitudinal issues.
- Mrs Major's dishonesty occurred over a prolonged period. The Trust only discovered the existence of the sanctions nearly a year later, when Mrs Major was forced to disclose them because she had been suspended in the UK.

Mr Edwards proposed the following mitigating factors:

- Mrs Major's work in the UK and her clinical practice were not subject to concerns by the Trust.
- Mrs Major has said that she did not have a fair hearing in Ghana. She said that when she was invited to attend a meeting by the NMC Ghana in March 2019, she was not aware that it was actually an investigation meeting until she had arrived. Whilst the NMC Ghana has had no opportunity to comment on this, the panel has evidence about the difficulties the UK NMC experienced in obtaining information from the NMC Ghana.

Mr Edwards submitted that such serious attitudinal concerns made it incompatible for Mrs Major to remain on the register. He submitted that no workable conditions could be formulated that would address the risk of repetition, and a striking-off order was the only appropriate order.

Decision and reasons on sanction

Having found Mrs Major'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 identified the following aggravating factors:

- Mrs Major has shown little to no insight into her failings.
- Her dishonest behaviour took place over a protracted period of time. From April 2019, Mrs Major appeared to be in discussions with the NMC Ghana about her case. However, she failed to inform the Trust of the sanctions that had been imposed until April 2020.
- When Mrs Major did declare the sanctions to the Trust, it was only because the NMC had been made aware of them and was taking action. Mrs Major was forced to declare the sanctions because she had been suspended by the NMC.
- Her dishonesty was premeditated and sustained.
- Mrs Major's failure to disclose the sanctions prevented her employer from undertaking a risk assessment before she commenced employment. This could have placed patients at a real risk of harm.

The panel did not identify any mitigating factors.

The panel first considered whether to take no action, but concluded that this would be inappropriate in the light of the seriousness of the charges found proved. 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 determined that an order which does not restrict Mrs Major'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 found that Mrs Major's misconduct was not at the lower end of the spectrum, and that a caution order would be inappropriate in the light of the seriousness of the charges found proved and the ongoing risk to the public. 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 Mrs Major's registration would be an appropriate and proportionate response. It found that as no concerns with Mrs Major's practice in the UK had been identified, it would be inappropriate to impose conditions on her UK registration. Additionally, it found that no practical or workable conditions could be formulated that would address Mrs Major's dishonest behaviour. The panel concluded that placing conditions on Mrs Major's registration would not adequately address the seriousness of this case, nor would it protect the public.

The panel carefully considered whether a suspension order would be a proportionate sanction. It noted that Mrs Major had engaged with the NMC up until a certain point, and had no information about why this engagement stopped. The panel considered that in her written evidence, Mrs Major had described her passion for midwifery and her goal of improving maternal mortality rates in Ghana.

However, the panel considered that it had minimal evidence of Mrs Major's insight, remorse, or remediation. It noted that much of Mrs Major's written evidence related to the perceived unfairness of the Ghanaian proceedings. The panel considered that Mrs Major's misconduct was an intentional act to withhold information from her UK regulator, which frustrated it from fulfilling its duty to protect the public. It considered that Mrs Major was an experienced midwife who would have been aware of the requirements of her regulator.

She made a calculated, deliberate decision not to declare the sanctions at a time when the Ghanaian proceedings would have been at the forefront of her mind.

Furthermore, the panel noted that Mrs Major's misconduct was not a failure to declare sanctions promptly, but a failure to declare sanctions at all over a period of nearly a year. It considered that had it not been for the NMC Ghana notifying the UK NMC of the sanctions, it would have been unlikely that Mrs Major's employer or her UK regulator would have been aware of their existence. The panel concluded that the dishonesty apparent in this case should be seen at the more serious end of the dishonesty spectrum.

The SG states that a suspension order may be appropriate where the following relevant 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;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel found that none of these factors was engaged.

Mrs Major's actions, as highlighted by the facts found proved, were a significant departure from the standards expected of a registered midwife. The panel found that the serious breach of fundamental tenets of the profession, honesty and integrity, as evidenced by Mrs Major's misconduct, is fundamentally incompatible with her remaining on the register.

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

Finally, in considering a striking-off order, the panel had regard to 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?*

Mrs Major's actions were significant departures from the standards expected of a registered midwife, and are fundamentally incompatible with her remaining on the register. The panel found that Mrs Major's misconduct was so serious that to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

After balancing all of these factors and considering all the evidence before it, and having no basis upon which it can be confident the risk of repetition is reduced, the panel concluded that a strike-off order is necessary to protect the public. The panel determined that this is the appropriate and proportionate sanction. Having regard to the effect of Mrs Major's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered midwife 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 midwife.

This will be confirmed to Mrs Major in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, or after any appeal that has been lodged has concluded, 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 is in Mrs Major's own interests until the striking-off sanction takes effect. The panel accepted the advice of the legal assessor.

Submissions on interim order

Mr Edwards submitted that an interim order was necessary to protect the public and was otherwise in the public interest until any appeal that may be lodged has concluded.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the 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 in order to protect the public and uphold the public interest. It determined that an 18-month period was necessary to allow sufficient time for any appeal that may be lodged to conclude.

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

That concludes this determination.