Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Wednesday 15 November – Friday 24 November 2023

Virtual Hearing

Name of Registrant:	Sithokozile Nkabinde
NMC PIN	17E0242E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – February 2018
Relevant Location:	Hull
Type of case:	Misconduct
Panel members:	Fiona Abbott (Chair, lay member) Lorna Taylor (Registrant member) Janet Fitzpatrick (Registrant member)
Legal Assessor:	Charles Conway (15, 17-24 November 2023) William Hoskins (16 November 2023)
Hearings Coordinator:	Rene Aktar (15-23 November 2023) Clara Federizo (24 November 2023)
Nursing and Midwifery Council:	Represented by Honor Fitzgerald, Case Presenter
Miss Nkabinde:	Present and represented by Tope Adeyemi, Barrister of 33 Bedford Row
Facts proved by admission:	Charges 1a), 1b), 1c), 3, 5
Facts proved:	Charges 2, 4, 6, 7
Facts not proved:	N/A
Fitness to practise:	Impaired

Sanction:	**Suspension Order (12 months)**
Interim order:	**Interim suspension order (18 months)**

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

On 16 November 2023, Ms Adeyemi made a request, on your behalf, that this case be held partly in private on the basis that proper exploration of your case involves sensitive matters concerning your private life. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Fitzgerald, on behalf of the Nursing and Midwifery Council (NMC), supported the application.

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.

Having heard that there will be reference to sensitive matters concerning your private life, the panel determined to go into private session as and when such issues are raised.

Details of charge

That you, a registered nurse:

1) On 29 December 2020:

    a) Failed to visit Patient A to change their compression bandages. **[PROVED BY ADMISSION]**

    b) Inaccurately recorded that you had changed Patient A's compression bandages. **[PROVED BY ADMISSION]**

c) When asked by Colleague A on 30 December 2020 if you had visited Patient A advised that the visit had happened, the time it happened and what had taken place. **[PROVED BY ADMISSION]**

2) Your conduct at charge 1b) and 1c) was dishonest in that you knew that you had not changed Patient A's compression bandages. **[PROVED]**

3) On 13 January 2021 in an explanatory meeting, you inaccurately confirmed that you had visited Patient A and described what had happened. **[PROVED BY ADMISSION]**

4) Your conduct at charge 3 was dishonest in that you knew that you had not visited Patient A. **[PROVED]**

5) Between 6 April 2020 until 25 January 2021 drove without a full driving licence. **[PROVED BY ADMISSION]**

6) On 14 January 2021 you confirmed that you had a full driver's licence and explained that you did not have it on you when asked to provide it. **[PROVED]**

7) Your conduct at charge 6 was dishonest in that you knew that you did not have a full driver's licence. **[PROVED]**

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

Background

Your name was first entered onto the NMC register on 18 February 2018. You were working as a community nurse at the time of referral. You started working as a Band 5 Community Staff Nurse for City Health Care Partnership CIC (CHCP) on 6 April 2020. This role required you to commute between various sites across the city and county.

You were referred to the NMC following an incident on 29 December 2020 when you were required to visit Patient A and it was alleged that you did not do so. On 30 December 2020, Patient A complained to CHCP that they had not received their scheduled visit. Witness 2 (Colleague A) your line manager, checked Patient A's notes and saw your record of the visit. Witness 2 spoke to you, and you told Witness 2 that you had visited Patient A. However, Patient A insisted that they had not been visited by you. Your colleague, Witness 1 visited Patient A later on 30 December 2020. Witness 1 described Patient A as having capacity and was *"compos mentis"* and therefore had no reason to be doubted. Witness 1 took a photograph of the bandage before changing it. Witness 1 stated that there is a difference between a week-old bandage and a day-old bandage. As the photograph showed the bandage had rolled down and was stained, it was concluded that it had not been changed the day before.

You completed Patient A's records to indicate that you had carried out the visit. This was alleged to be inaccurate because the condition of the bandages together with Patient A's presentation indicated that you had not attended to Patient A as you claimed.

On 13 January 2021, you attended a meeting with Witness 3 and the Professional Lead to discuss Patient A's visit. After you had left the meeting, the Professional Lead commented on the standard of your driving. You had been driving independently and driving your own car to attend patients' homes. As a result, Witness 3 checked whether you had a full driving licence and discovered that you did not have one, but rather a provisional licence. As part of your documentation for the post, you had provided a provisional licence to CHCP's HR. In the light of this, another meeting was arranged for 14 January 2021.

In that meeting, you allegedly confirmed that you did have a full driver's licence but did not have it on you. Witness 3 then probed further and asked you if you knew what a full driver's licence was, and it was then that you allegedly admitted that you did not have a full driving licence. You said that your test had been cancelled because of the COVID pandemic.

On 15 January 2021, Witness 3 received a statement from you in response to the allegations in which you accepted that you did not have a full driver's licence. You also said that you had made a mistake in relation to the records of Patient A and that it had not been your intention to falsify records. You also admitted that you had not visited Patient A. Another meeting was held on the 18 January 2021 and your employment was terminated with effect from the 25 January 2021.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Adeyemi on your behalf, who informed the panel that you made full admissions to Charges 1a), 1b), 1c), 3 and 5.

The panel therefore finds charges 1a), 1b), 1c), 3 and 5 proved in their entirety, by way of your admissions.

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 Ms Fitzgerald and Ms Adeyemi on your behalf.

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 witnesses called on behalf of the NMC:

- Witness 1: Community Nurse for CHCP
- Witness 2: Clinical Team Leader at City Health Care Partnership (CHCP)

- Witness 3: Clinical Team Leader and Professional Lead for CHCP

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor and also took into account the Guidance of the NMC DMA-7 *'Making decisions on dishonesty charges'.* It considered the witness and documentary evidence provided by the NMC, your evidence and the submissions made by Ms Adeyemi on your behalf.

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

Charge 2)

> 'Your conduct at charge 1b) and 1c) was dishonest in that you knew that you had not changed Patient A's compression bandages.'

This charge is found PROVED in its entirety.

Decision on Charge 2 1b)

In reaching its decision, the panel considered Witness 2's witness statements, their oral evidence and the Electronic Patient Records extract prepared by Witness 2 when investigating and establishing a timeline of events. The panel also considered your reflective statements and your oral evidence.

The Electronic Patient Records showed the notes made by you when recording your visit to Patient A on 29 December 2020. You were familiar with Patient A, using her first name in the notes, and record that Patient A gave verbal consent for you to perform wound care. The Electronic System recorded that you had made these notes at 15:04 on 29 December 2020.

The panel noted that in your reflective statement dated 15 January 2021 you stated, *'at approximately 14.45pm, I went to my last Patient (Patient A)…On arrival, I rang her flat number several times but no one answered the door. I went back to the car and checked if I could ring their number. Patient A number a few times but no one answered the phone. I sat in the car park and started the documentation of all the care plans but kept on trying the Patient A number, there was no answer. I did all the care plans including Patient A.'* [sic]

In your oral evidence, you stated that you had mistakenly completed Patient A's notes with details of another patient. This other patient, you said, was an Emergency Patient who had been added to your list. You said that this patient had a very similar name to Patient A and that this was why you had confused them. You told the panel that you had been muddled and mixed them up. You further stated that the reason you had not mentioned this in your reflective statement dated 15 January 2021 was that Witness 3 had told you it was irrelevant and not to include it.

In her supplementary statement, Witness 2 states:

> *'I cannot see any evidence within the electronic record where Miss Nkabinde's visit list was that there were any additional visits added on the 29 December 2020. If an emergency visit had been given to Miss Nkabinde it would have been added to the electronic visit list. There is no evidence of any additional visits being given to her on 29 December 2020. As such on the electronic record there are no patients that have full names which are similar to the 16 name of the patient whom Miss Nkabinde failed to attend on 29 December 2020.'*

The panel heard oral evidence from Witness 2 that there was no record of an Emergency Patient being assigned to you on that day. In Witness 2's response dated 11 August 2023 to the NMC investigation of events, they stated:

> *'I cannot see any evidence within the electronic record were SN visit list was that there were any addition visits added on the 29th December 2020. If an emergency*

visit was given it would have been added to the electronic visit list. There is no evidence any addition visits were given this day.' [sic]

…

'There are no patients on the electronic record that have similar full names. I am unable to check as there was no additional emergency visits requested for SN for this day.' [sic]

The panel considered your reflective piece produced some months after the events in which you stated:

'On this day before visiting I was assigned to a patient who called for an emergency visit because her bandages were unravelled, both legs were wet and she was in pain. When I got there I quickly redressed both her legs and left her comfortable, happy and settled.'

The panel had regard to the timeline produced by Witness 2 in which the visit attributed to Patient A at 15.04 clearly states that you only attended to one leg. The afternoon visits appear to indicate dressings have been applied to both legs for all other patients.

The panel found Witness 2's evidence to be clear and consistent and the panel accepted the evidence of Witness 2 that there was no Emergency Patient assigned to you that day.

The panel finds that your explanation that you were muddled between the Emergency Patient and Patient A was implausible. You clearly wrote in Patient A's records that the patient required a compression dressing to a single leg. This contradicts your explanation in your later reflection that these notes refer to an Emergency Patient who you stated required dressings to both legs. Furthermore, you refer to Patient A by their first name in your notes and confirmed in your reflective statement that these notes were written contemporaneously by you at the time you tried to visit Patient A.

Furthermore, the panel determined that your oral evidence and reflection in relation to this charge concerning dishonesty was inconsistent. In your answer to your own counsel, you said you were muddled and confused and yet, when cross examined, you clearly admitted

that you acted dishonestly by falsifying the records. You then reverted to saying you were muddled and confused rather than dishonest when re-examined.

The panel did not accept your evidence that you were muddled and that you had confused Patient A with an Emergency Patient and found this alternative explanation implausible.

In light of all of the above, the panel concluded that when you inaccurately recorded that you changed Patient A's compression bandages, you knew that this was false and therefore that you were acting dishonestly in relation to this charge.

Decision on Charge 2 1c)

The panel had regard to the evidence of Witness 2 and your evidence.

In her oral evidence, Witness 2 confirmed that her witness statement was true. It stated:

> *'I then called the Registrant to ask if the visit had happened and she clearly stated that it had, that it occurred at approximately 2:30pm and identified what had taken place.'*
>
> *…*
>
> *'When I spoke to the Registrant on 30 December 2020 I thought she had a normal response. She did not seem shocked or confused by the questions. She said the visit went absolutely fine and gave quite a clear description of Patient A's leg. This gave me no cause to think she was being dishonest. At this time I do not think she had any insight into the nature of the concern because she seemed adamant that the visit had happened.'*

You accepted in your oral evidence that you had confirmed to Witness 2 on 30 December 2020 that you had visited Patient A.

In your oral evidence when cross examined, you stated that you knew you were being dishonest by saying you had been to see Patient A when you had not. It was suggested to you that because you were being asked what had occurred on the day after the incident,

this would have jogged your memory as to what had happened the day before. You agreed that you were being dishonest. When re-examined by your counsel, you reverted to your explanation that you did not think much about it and were rushing out, and that you were mistaken rather than being dishonest. The panel therefore found that your oral evidence in relation to this charge was contradictory and inconsistent.

The panel accepted the evidence of Witness 2 and found it to be reliable and consistent.

In considering your alternative explanation, the panel determined it was highly unlikely that you would be making an honest mistake when you confirmed to Colleague A on 30 December 2020 that you had visited Patient A the day before. In your reflective statement dated 15 January 2021, you stated that you had tried to visit Patient A but there was no reply from the patient and that you made multiple telephone calls to them which were unanswered. You also stated that you knew it was a failed visit. Given that you described these multiple attempts to visit Patient A around 15:00 on 29 December 2020, the panel concluded that it was unlikely that you would not remember that the visit had failed when you were questioned about it 24 hours later by Witness 2. The panel therefore determined that you knew that what you said to Witness 2 (Colleague A) was untrue.

In light of all of the above, the panel concluded that when you told Colleague A that the visit had taken place, the time it had happened and what had taken place, you knew that this was false and therefore that you were acting dishonestly.

The panel therefore determined that your conduct at Charge 1c) was dishonest.

The panel concluded that your conduct in both Charges 1b) and 1c) was dishonest in that you knew you had not changed Patient A's compression bandages.

The panel therefore found Charge 2 proved in its entirety.

Charge 4)

> 'Your conduct at charge 3 was dishonest in that you knew that you had not visited Patient A.'

This charge is found PROVED.

In reaching its decision, the panel considered Witness 3's oral evidence and witness statement, the minutes from the Exploratory Meeting dated 13 January 2021 and your oral evidence.

In their witness statement, Witness 3 states:

> *'I exhibit the minutes of this meeting…[Exploratory Meeting minutes dated 13 January 2021], which I confirm are accurate. I asked the Registrant to explain the 29 December 2020 incident and she confirmed again that she had visited the patient and described exactly where she sat in the patient's house and what she did.'*

The minutes from the Exploratory Meeting from 13 January 2021 record that Witness 3 asked you about your visit to Patient A and that you responded:

Witness 3: *'Did you visit the patient?'*

You responded: *'yes I remember this patient clearly, The patient is a leg dressing. I remember sitting in the corner in her dining room with my laptop and doing the documentation. the patient must have forgot that I went.'* [sic]

The panel acknowledged that these minutes were not a verbatim account of the proceedings. However, the panel concluded that this did not undermine the broad accuracy of their content as stated by Witness 3.

In cross examination, you stated that you could not remember saying that you were sitting in the corner of the room. You said that there were a lot of questions. You also said you could not remember, you may have said it, but it was quite a while ago.

It was put to you in cross examination that this was dishonest when you stated that you had visited Patient A and had described what had happened. You agreed it was dishonest, but later reverted back to what you said in evidence in chief that you were muddled and confused.

The panel determined that you must have known you had not visited Patient A, for the reasons set out in the decision on Charge 2).

In considering Charge 4), the panel considered your alternative explanation that you were muddled and confused. The panel found that your oral evidence was inconsistent and rejected your alternative explanation as implausible.

The panel concluded that your conduct at Charge 3) was dishonest in that you knew that you had not visited Patient A. The panel therefore found this charge proved.

Charge 6

> 'On 14 January 2021 you confirmed that you had a full driver's licence and explained that you did not have it on you when asked to provide it.'

This charge is found PROVED.

In reaching this decision, the panel considered Witness 3's oral evidence and their witness statement, the oral evidence of Witness 2, the internal meeting minutes of 14 January 2021, your reflective statement and your oral evidence.

The panel took into account Witness 3's statement in which they stated:

> *'I asked the Registrant whether she had a full driving licence. She confirmed that she did have one, and then said she did not have it on her when I asked to see it. I then asked her if she knew what a full driving licence was which is when she admitted that she did not have one but said her test was cancelled because of the COVID-19 pandemic. However, she would have needed a full licence before the pandemic as she started to work for CHCP at the beginning of the pandemic.'*

Witness 3 confirmed that this is what happened during the meeting in their oral evidence.

In the minutes from the internal meeting on 14 January 2021, it is recorded that Witness 3 asked you about your driving licence as follows:

Witness 3: *'do you have a Full driving licence that allows you to drive independently?'*

You: *‘yes of course I have.’*

Witness 3: *‘Can you show me your driver’s licence?’*

You: *‘No I haven’t got it with me.’*

In oral evidence, Witness 2 confirmed that they had been present in the meeting dated 14 January 2021. They stated when you were asked if you had a full licence, you initially said you did.

The panel noted that Witness 2 was not recorded as being present on the minutes of the meeting on 14 January 2021, but it also noted that in her written statement and oral evidence, Witness 2 confirms that they were at this meeting.

When asked about your driving licence by Witness 3, in your oral evidence you said you had a provisional licence and removed it from your wallet to show to them. In cross examination, you initially stated that you had not said you had a full driver’s licence in that meeting, but then accepted that you might have said that you had a full driving licence.

The panel found that the evidence of Witness 2 and Witness 3 to be credible and consistent and prefer their evidence to yours on the balance of probabilities.

The panel therefore found this charge proved.

Charge 7

> ‘Your conduct at charge 6 was dishonest in that you knew that you did not have a full driver’s licence.’

This charge is found PROVED.

In reaching its decision, the panel considered your reflective statement from 15 January 2021 and your oral evidence.

In your reflective statement you stated:

‘I am aware that I should not have driven without a full driving licence…..I was hoping that before I commence the job, I would have done my practical driving test and passed…’

In cross examination, when asked if you were aware that you needed a full driving licence you replied that you were aware that you needed one.

The panel was satisfied that when you said in the meeting on 14 January 2021 that you had a full driving licence, you knew you did not have one, and therefore the panel concluded that by stating you did have one, you were acting dishonestly.

The panel therefore found this charge proved.

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

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Ms Fitzgerald 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 Fitzgerald submitted that Charge 1a) shows a failure to maintain effective communication with colleagues, which relate to 8.2 of the Code. She submitted that it also relates to part 1.2 of the Code to make sure you deliver the fundamentals of care effectively, and to 20.5 of the Code, to treat people in a way that does not take advantage of their vulnerability or cause them upset or distress. She submitted that Charge 1b) was a failure to keep clear and accurate records, and relates to 10.1 of the Code, which requires nurses to complete all records at the time or as soon as possible after an event, and part 10.3 of the Code, which requires nurses to complete all records accurately and without any falsification.

Ms Fitzgerald submitted that the charges relating to dishonesty amounted to a failure to uphold the reputation of the profession and engaged part 20.2 of the Code. She submitted that Charge 5) relates to a failure to uphold the reputation of the profession by not acting with honesty and integrity. Ms Fitzgerald submitted that driving around illegally, against the laws of the country, is serious and amounts to misconduct. This breach of the NMC Code specifically relates to paragraph 20.4 of the Code, which is keeping to the laws of the country in which you are practising.

Ms Adeyemi submitted that those matters of failing to visit Patient A to change their compression bandage, the inaccurate recording, and the responses that you gave to

colleagues each were not serious enough to amount to misconduct. She also submitted that the driving concerns are not so serious as to amount to misconduct. She accepted that your actions in driving without a full driving licence were clearly unacceptable but there was no police involvement, and this would have only resulted in a fine and penalty.

Ms Adeyemi submitted that individually, the charges do not amount to breaches that are serious enough to amount to misconduct. She submitted that although there are a number of allegations that were found proved, this does not increase their individual seriousness.

Ms Adeyemi submitted that in terms of Charge 1a), while it is unacceptable conduct, this is not serious enough as to amount to misconduct. She submitted that there was not a pattern of conduct here and that a '*dip test'* of other records that you had made were checked and no evidence was found that you had falsified any other records.

Ms Adeyemi submitted that although this behaviour could have resulted in harm, it did not result in actual harm to the patient, and that is something that the panel should take into account when considering the seriousness of such a matter. She accepted that this was unacceptable behaviour and that you knew it to be wrong. She accepted that members of the public would expect nurses to be compliant with the law. Ms Adeyemi accepted that your behaviour fell short of what was expected in the circumstances and that you knew that. She submitted whilst the behaviour was inappropriate, it does not meet the threshold of seriousness as to amount to misconduct.

The panel was asked by Ms Adeyemi to make a determination on misconduct, prior to hearing submissions on impairment. There was no objection to this course by Ms Fitzgerald. The legal assessor advised there was no impediment under the Rules for determining misconduct separately. The panel agreed in the light of the above that it would make a determination on misconduct before hearing submissions on impairment.

The panel accepted the advice of the legal assessor on the issue of misconduct.

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 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:

> ***'1 Treat people as individuals and uphold their dignity***
> *1.2 make sure you deliver the fundamentals of care effectively*
>
> ***8 Work co-operatively***
> *8.2 maintain effective communication with colleagues*
> *8.5 work with colleagues to preserve the safety of those receiving care*
>
> ***10 Keep clear and accurate records relevant to your practice***
> *10.3 complete records accurately and without any falsification…*
>
> ***20 Uphold the reputation of your profession at all times***
> *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…*
> *20.4 keep to the laws of the country in which you are practising*
> *20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

However, the panel considered that it was the context in which these breaches occurred which made them particularly serious and amounted to your behaviour falling significantly short of the standards expected of a nurse.

In charges 1a), 1b), 1c), and 3) by failing to visit the patient and not communicating this to colleagues, you put Patient A at risk of harm. Furthermore, you compounded this by falsifying records to give the impression that you had attended Patient A. You continued with this deception when questioned by a colleague the next day and on 13 January 2021. The panel found these charges breached the Code specifically at parts 1.2, 8.2, 8.5, 10.3, 20.1 and 20.5.

In Charge 5), which relates to you driving without a full driving licence, the panel found that this was a serious breach of the Code at parts 20.2 and 20.4 in that you had driven unlawfully for nine months whilst carrying out your clinical duties, when you knew this was illegal.

In Charge 6) which relates to oral statements made by you to your employer, the panel found that this was a serious breach of the Code at part 8.2 in that you did not communicate candidly when asked about your driving licence.

The panel concluded that by driving without a full licence in the course of your employment, you put yourself, members of the public, and employers at risk of potential harm. The panel found that this was a serious breach of the Code at part 20.4.

The panel noted that the charges relating to dishonesty all involved lying to your employers breaching part 20.2 of the Code.

The panel found that all of the Charges amounted to a serious breach of part 20.1 of the Code.

The panel found that all your actions fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Further evidence from you

Prior to submissions on impairment, you gave further evidence under affirmation.

You told the panel what you would do differently in future, stating that you would inform the co-ordinator or manager if you were struggling with your caseload.

You acknowledged that driving without a full licence was against the law. You informed the panel that if you were interviewed for a nursing role in the future, and you discovered at interview that you needed a full driver's licence, you would be open and explain that you did not meet the requirements for the role.

You told the panel you had learned that you need to be open and honest, that as a nurse your effective communication was necessary to ensure the safety of patients, and that records needed to be up to date and clear.

The panel heard that you had not felt able to work and had experienced significant personal difficulties following your dismissal.

Submissions on impairment

Ms Fitzgerald 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 Fitzgerald submitted that you failed to inform anyone that you did not visit Patient A, and that if Patient A had not telephoned to say she had not been visited, her bandages would not have been changed for a week. She submitted that this placed Patient A at risk of harm.

Ms Fitzgerald submitted that you have in the past and or are liable in the future to bring the profession into disrepute for the reasons of the repeated dishonesty that the panel have found to have occurred. She submitted that in relation to the risk of repetition, the panel should consider that there were a number of dishonest statements made to colleagues, in meetings and in the patient records.

Ms Fitzgerald submitted that the panel should consider your evidence and reflective statements in relation to impairment and insight. In considering insight, Ms Fitzgerald stated that you knew what you should have done in relation to these charges. She acknowledged you expressed clear regret and remorse, but highlighted there were a number of elements of dishonesty in regard to your records and information given to colleagues.

Ms Fitzgerald submitted that you are not subject to an interim order and that it is open for you to work. She submitted that although you have made admissions to some of these charges and showed some insight, you did not accept all of the charges. She submitted that this shows a lack of insight. Ms Fitzgerald submitted that your fitness to practise is impaired by reason of the misconduct that the panel found proved.

Ms Adeyemi submitted that there are no concerns about your clinical competence, but they relate instead to attitudinal concerns and your professionalism. She submitted that there is no risk of repetition and that the public interest would not be served by finding of impairment. Ms Adeyemi submitted that although dishonesty is an extremely serious matter, a finding of impairment does not always follow from dishonesty.

Ms Adeyemi submitted that you are extremely sorry for what occurred at CHCP. She said that you consistently express your regret for what happened and that you have been able to explain clearly the impact of your actions on Patient A, your colleagues and on the public. Ms Adeyemi submitted that your focus has been on the erosion of trust that your behaviour engendered and the reputational damage you have caused.

Ms Adeyemi submitted that although your behaviour was wholly unacceptable, it does not represent a pattern of behaviour, and there have been no previous concerns about your honesty or clinical practice, and she submitted the panel should take this into account. She said that when Patient A's details were checked, and it is not the case that you falsified records before.

Ms Adeyemi submitted that you have also demonstrated self-awareness. She said that you have been free to work, but that you will wait to work until the conclusion of these proceedings. She said that you have taken more time to reflect and think about things.

Ms Adeyemi submitted that the panel have evidence of targeted remediation, insight, evidence of good practice, and genuine regret for what has occurred. She said that these represent good progress and that there is no risk repetition.

Ms Adeyemi submitted that public would be content knowing that you have been held to account, that you have completed relevant courses, and that you are apologetic. She invited the panel to find that you are not currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of recent judgments which included *Cohen [2008] EWCH 5H1* and *Grant [2011] EWHC 927 (Admin)* and NMC Guidance on impairment (DMA-1).

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

In this regard the panel considered the 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 of the above test were engaged both to your behaviour in the past and to your likely behaviour in the future.

The panel found that Patient A was put at risk of harm by your behaviour. You failed to visit Patient A to change their compression bandages which could have led to Patient A suffering serious physical harm. It was only because Patient A contacted CHCP to alert them to the missed appointment that another nurse was sent to visit Patient A as an emergency call the next day. Patient A was distressed in that they felt they might not be believed by CHCP when they reported your failed visit. The panel considered this caused Patient A to suffer emotional harm. By falsifying Patient A's records, other nurses treating Patient A would have been wrongly informed of the treatment Patient A had received. This would have put Patient A at risk of harm as they would have received future care based on inaccurate records.

The panel found that your conduct brought the nursing profession into disrepute. You failed to provide the fundamentals of patient care to the standard expected of a registered nurse. You failed to provide adequate care to a vulnerable patient, falsified their records and were not open and honest with your employer and colleagues. You drove on your own for work related reasons, over an extensive period of time, without having a full driving

licence. You knew this was against the law but continued nonetheless. The panel concluded that behaviour of this nature would seriously undermine the public's confidence in the nursing profession.

Your conduct breached fundamental tenets of the nursing profession in that you failed to prioritise Patient A's care and failed to act honestly and professionally with colleagues.

You acted dishonestly in your communication with colleagues on more than one occasion in relation to Patient A's visit. You also acted dishonestly by maintaining that you had a full driving licence when questioned by your senior manager.

The panel considered whether your behaviour was remediable. With regard to the dishonesty charges, the panel acknowledged that it is difficult to demonstrate remediation as dishonesty is an attitudinal concern. The panel further concluded that underlying all of the charges was your lack of openness and integrity, for which it was also difficult to demonstrate remediation.

Regarding insight, the panel took into account your responses under affirmation. The panel acknowledged that you made admissions to some charges and that you have engaged with the regulatory process. You stated that as a result of these proceeding you had understood the importance of acting honestly, being truthful and behaving in a way that could be trusted by patients, colleagues and the wider public.

You also expressed that you regretted your behaviour in relation to Patient A and that as a result of your behaviour Patient A may not feel able to trust other medical professionals, including nurses and doctors. You said that you thought about your actions in relation to Patient A every day and that you felt bad about what you had done.

The panel heard from you that you had not worked as a nurse since these proceedings began as you did not want to do so until these matters were concluded. You said that you did not feel that you were able to face other nurses at this stage. You said that if you were

now faced with the same situations as in the charges, you would be open and honest with your employer. You said also said that at the time of these events you [PRIVATE].

As you have not been working as a nurse, or in any other capacity, the panel considered that it had no evidence before it that you have worked openly and honestly with employers and colleagues since these incidents.

The panel considered that you had limited insight into the risk of harm that you had caused Patient A in that you did not acknowledge the potentially serious physical and actual emotional harm that you had caused Patient A by failing to visit them.

The panel noted that you had undertaken two CPD course in April 2021. One on Record keeping and one on Assertiveness. The panel concluded that the charge regarding record keeping did not relate to a lack of knowledge of how to document records but to falsification of records. The panel also considered that assertiveness does not necessarily address dishonest behaviour. The panel therefore found that these CPD courses were of limited value in assessing whether your behaviour in regard to being open and honest had been remediated.

The panel concluded that because of your limited insight into your failings and their consequences, and the lack of evidence to demonstrate a change in your behaviour and attitude, there is a real risk of repetition of similar behaviour which could cause harm to patients in the future.

For the above reasons, the panel concluded that you have not demonstrated that you are able to practise kindly, safely and professionally. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel determined that the charges relating to dishonesty were particularly serious and concluded that confidence in the profession would be significantly undermined if there were to be no finding of impairment in this case.

The panel bore in mind 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 concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also 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 12 months with a review. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Ms Fitzgerald outlined that there is no rule or test for imposing a sanction and that the panel must exercise its professional judgement. The sanction must be proportionate and necessary, not punitive, and must be the least restrictive way of meeting the aim of protecting the public and maintaining public confidence in the profession.

Ms Fitzgerald referred the panel to case law in relation to dishonesty: *Nicholas-Pillai v General Medical Council [2009] EWHC 1048 (Admin).*

Ms Fitzgerald informed the panel that in the Notice of Hearing the NMC had advised you that it would seek the imposition of a striking-off order if the panel found your fitness to practise currently impaired. She submitted that this remained the most appropriate sanction in light of the panel's findings, and she submitted that your conduct was fundamentally incompatible with remaining on the Register.

Ms Fitzgerald identified aggravating factors for the panel to consider, which included a risk of harm and upset caused to Patient A, the multiple incidents of dishonesty and that you only admitted that you had not visited Patient A when it became clear in evidence.

Ms Fitzgerald also identified mitigating factors that the panel may consider, which included remorse during your oral evidence, and that this was an isolated incident of potential harm.

The panel also bore in mind Ms Adeyemi's submissions on your behalf. She highlighted to the panel the value of the courses you had undertaken, the positive references about you, as well as your admissions and reflections on the incidents. She submitted that you understood the seriousness of the concerns, particularly those which involved dishonesty.

Ms Adeyemi also told the panel that you have completed a number of shifts with an agency after the incidents and no further concerns were raised about your practice. She submitted that following the events, you have taken steps and did what was required of you by informing the agency about the NMC investigation. She submitted that you have participated in every stage of these proceedings fully and have demonstrated insight and remorse, specifically towards Patient A.

Ms Adeyemi invited the panel to consider your personal circumstances at the time including [PRIVATE] as well as the difficulties posed by the Covid-19 pandemic. She reminded the panel of your oral evidence and that this was evidence of your patient focus and that this was indicative that you are a caring nurse. She submitted that you

acknowledge there is more work for you to do and improve but that what is important is that you have started this process.

Ms Adeyemi submitted that a striking-off order would be wholly disproportionate and is not necessary to mark the seriousness of the facts found proved. She submitted this order was not the only sanction available, and that the most appropriate least restrictive sanction would be a conditions of practice order, but that this was a matter for the panel.

The panel heard and accepted the advice of the legal assessor, which included reference to the NMC guidance on sanction and recent caselaw: *Dr Sawati v GMC [2022] EWHC 283 (Admin).*

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 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:

- Conduct which put Patient A at risk of physical harm and caused actual emotional harm
- Driving without a full driver's licence over a period of time, putting you, the public and your employer at risk
- A number of instances of dishonesty over a period of time

The panel also took into account the following mitigating features:

- Some insight into failings, although limited
- Expressed remorse regarding the impact of your actions on Patient A and on the profession
- Challenging personal circumstances
- Admissions to some charges
- Some CPD training

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 would it provide public protection.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 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 a conditions of practice order 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 is of the view that there are no relevant, workable, measurable or practical conditions that could be formulated to address the serious nature of the dishonesty charges. The misconduct in relation to the dishonesty charges were attitudinal in nature and the panel concluded that the concerns cannot be addressed through any conditions. Therefore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public.

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

- *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 not fundamentally incompatible with remaining on the Register. It noted that although there was evidence of attitudinal problems, the panel accepted that these were not '*deep-seated*' and recognised that there were no previous or subsequent attitudinal problems or concerns regarding your general clinical practice.

The panel was of the view you had taken some steps towards strengthening your practice and that your insight was now developing. It was of the view that a suspension order was appropriate to allow you time to reflect on your next steps and to demonstrate how you will ensure this does not happen again in the future.

The panel acknowledged your personal challenges at the time of the incidents.

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigations provided, the panel concluded that it would be disproportionate at this time. It concluded that a striking off order is not the only sanction available that would protect the public and satisfy the public interest. Although your conduct did raise questions about your professionalism, the panel is of the view that this does not require permanent removal from the Register because a temporary removal would be proportionate.

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 will inevitably cause you. However, this is outweighed by the public interest in this case.

The panel considered 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 determined that a suspension order, with review, for a period of 12 months was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Continued engagement with the NMC process and attendance at any future reviews
- Any further written evidence of reflection
- References or testimonials from paid or unpaid work
- Evidence of how you have kept up to date with clinical practice

This will be confirmed to you in writing.

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 Fitzgerald. She invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period, on the basis that it is necessary for the protection of the public and is otherwise in the public interest.

The panel also took into account the submissions of Ms Adeyemi that no interim order would be necessary to cover the appeal period as the incidents happened over three years ago and you have not been subject to any other practice restriction since then. She submitted an interim suspension order would be inappropriate and disproportionate.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order.

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

The panel therefore imposed an interim suspension order to reflect the seriousness of the charges found proved because to do otherwise would be incompatible with its earlier finding to suspend your practice. The period of this order is for 18 months to allow for the possibility of an appeal to be made and concluded.

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

That concludes this determination.