

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

**Substantive Hearing  
06 February 2024 – 09 February 2024**

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

**Name of Registrant:** Ekerette James Ubom

**NMC PIN** 13G0417E

**Part(s) of the register:** Nurses part of the register Sub part 1  
RNMH: Mental health nurse, level 1 (24 May 2014)

**Relevant Location:** England, Colchester

**Type of case:** Misconduct

**Panel members:** Anthony Mole (Chair, Lay member)  
Melanie Lumbers (Registrant member)  
Linda Redford (Lay member)

**Legal Assessor:** Michael Levy

**Hearings Coordinator:** Hazel Ahmet

**Nursing and Midwifery Council:** Represented by Alex Radley, Case Presenter  
Represented by Matthew Cassells, Case Presenter

**Mr Ubom:** Virtually present, not represented at the hearing

**Facts proved:** Charges 1, 2, 3, 4, 5, 6 and 7, by admission

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

**Sanction:** **Strike-off**

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

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

At the outset of the hearing the panel proposed that this case be held in private on the basis that proper exploration of your case involves matters regarding your personal circumstances and health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Both you and Mr Radley indicated that you supported the application to the extent that any reference to your health matters should be heard in private.

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

The panel determined to go into private session in connection with your personal circumstances and health matters as and when such issues are raised in order to protect your privacy.

## **Details of charge**

*That you, a registered nurse:*

- 1. Between 23 November - 26 November 2021, told a panel of the Fitness to Practise Committee that your employer, Tall Trees Care Home ("the Home"), was aware of the NMC fitness to practise proceedings against you.*
- 2. Your actions as set out at charge 1 were dishonest in that you knew your employer was not aware of the fitness to practise proceedings.*

*3. Between 26 November 2021 and 18 May 2022, did not inform your employer that your registration was subject of interim and/or substantive conditions.*

*4. Your actions as set out in charge 3 were dishonest in that you represented to your employer that your registration was not subject of conditions when you knew it was.*

*5. Between 26 November 2021 and 18 May 2022, worked in breach of the interim and/or substantive order imposed at the conclusion of the substantive hearing referred to at charge 1.*

*6. On or after 19 May 2022, told the Home you only knew the outcome of the Fitness to Practise Committee hearing in or around May 2022.*

*7. Your actions as set out at charge 6 were dishonest in that you knew you had attended the hearing referred to at charge 1 and had therefore known the outcome since 26 November 2021.*

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

## **Background**

You appeared before the Fitness to Practice Committee on 23 November 2021 – 26 November 2021. At that hearing, you were given a substantive conditions of practice order which specified the following:

*'For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course'*

*mean any course of educational study connected to nursing, midwifery or nursing associates.*

*1. You must ensure that you are supervised by your line manager (who must be registered with the NMC) or someone that your line manager deems suitably qualified. At a minimum your supervision must consist of fortnightly meetings to discuss your clinical caseload and to review your record keeping. The meetings must be documented, recording what was discussed.*

*2. You must work with your supervisor to create a personal development plan (PDP). Your PDP must address the concerns about your record keeping and identifying care of a deterioration patient. You must:*

*a) Send your NMC case officer a copy of your PDP within 2 months of these conditions taking affect.*

*b) Meet with your supervisor at least every month to discuss your progress towards achieving the aims set out in your PDP.*

*c) Send your NMC case officer a report from your supervisor every 3 months. This report must show your progress towards achieving the aims set out in your PDP.*

*3. You must produce a written reflective piece of work which demonstrates your insight into your professional development in respect of the charges and demonstrates how you have since strengthened your practice. You must send your NMC case officer this reflective piece of work 7 days before the review hearing or meeting.*

*4. You must keep the NMC informed about anywhere you are working by:*

*a) Telling your case officer within seven days of accepting or leaving any employment.*

*b) Giving your case officer your employer's contact details.*

*5. You must keep the NMC informed about anywhere you are studying by:*

*6. a) Telling your case officer within seven days of accepting any course of study.*

*b) Giving your case officer the name and contact details of the organisation offering that course of study.*

*7. You must immediately give a copy of these conditions to:*

*a) Any organisation or person you work for including your supervisor.*

*b) Any agency you apply to or are registered with for work.*

*c) Any employers you apply to for work (at the time of application).*

*d. Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.*

*e) Any current or prospective patients or clients you intend to see or care for on a private basis when you are working in a self-employed capacity.*

*f) You must tell your NMC case officer, within seven days of your becoming aware of:*

*g) Any clinical incident you are involved in.*

*h) Any investigation started against you. i) Any disciplinary proceedings taken against you.*

*8. You must allow your NMC case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:*

*a) Any current or future employer.*

*b) Any educational establishment.*

*c) Any other person(s) involved in your retraining and/or supervision required by these conditions. The period of this order is for nine months.'*

Subsequent to that order, between November 2021 and May 2022, you continued to work as a registered nurse.

You informed the previous panel during your Fitness to Practice hearing, that your employers were aware of the NMC investigation and the hearing.

In May 2022, as a result of a routine HR audit, your employer discovered that a restriction had been placed on your PIN, and that you were working under a conditions of practice order which they were unaware of.

In May 2022, your manager contacted the NMC to find more detail about the conditions.

### **Decision and reasons on facts**

At the outset of the hearing, the panel heard from you when you informed the panel that you made full, formal admissions to charges 1, 2, 3, 4, 5, 6, and 7.

The panel noted all of the documentary evidence it had before it.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence and your admissions.

The panel therefore finds charges 1, 2, 3, 4, 5, 6, and 7 proved in their entirety, by way of your admissions.

### **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 ability to practise kindly, safely and professionally.

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.*’

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

Mr Radley identified the specific, relevant standards where your actions amounted to misconduct and made the following submissions:

1. *‘The Registrant has admitted Charges 1-7. The Panel will now be considering Misconduct.*
2. *The Panel will be aware that the professional standards of practice and behaviour for nurses, midwives and nursing associates sets the professional standards that patients and public tell the NMC that they expect.*
3. *The panel will be familiar with the leading case of Roylance v GMC [1999] UKPC 16 where Lord Clyde provided guidance when considering what could amount to misconduct.*

*‘[331B-E] Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [Nurse] practitioner in the particular circumstances.’*

4. *Further assistance may be found in the comments of Jackson J in Calhaem v GMC [2007] EWHC 2606 (Admin) and Collins J in Nandi v GMC [2004] EWHC2317 (Admin);*

*'[Misconduct] connotes a serious breach which indicates that the [Nurse's] fitness to practice is impaired.*

*And*

*'The adjective 'serious' must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners.*

5. *The NMC assert that here, Mr Ubom's, acts, falls short of the standards set out in The Code: Professional standards of practice and behaviour for nurses and Midwives (2015) ("The Code")*
6. *Due to Mr Ubom falling short of "the Code", what he did, we say, amounts here to serious professional misconduct*
7. *For the reasons below The NMC assert that Mr Ubom's actions amounts to serious professional misconduct and the NMC will go on to say that this has resulted in Mr Ubom currently being impaired.*
8. *The actions accepted by Mr Ubom are failings directly related to clinical practice because this would have affected his supervision/ personal development. The Conditions of Practice Order specifically directs the Registrant to tell his employer/ supervisor and provide them with a copy of the same. This was not done.*
9. *The NMC say that this is a dishonest act placing patients at risk, deceiving staff and colleagues.*
10. *The nurse was present during the COP hearing and had the finding explained to him by the legal assessor before leaving the hearing and chose not to*



*comply with the Panels order. This in itself is a serious failure in professional standards of a registered professional.*

*11. They are not simply breaches of a local disciplinary policy or minor concerns, they are matters at the heart of and fundamental to the professional's practice. It is a serious concern at the heart of a caring profession.*

*12. They can be serious professional misconduct because these issues relate to the nurses, role as a registered professional and the potential impact on his area of practice, such as Issues in the original hearing which put patients at risk of suffering and this could create a poor working environment at the home.*

*13. The NMC say that the behaviour here amounts to 'Serious Misconduct'.*

*14. The panel will be aware that seriousness is an important concept which informs various stages of our regulatory processes. The public's trust and confidence in all nurses, demonstrating the behaviour found by Mr Ubom here must, we assert, amount to a serious misconduct.*

*15. When considering seriousness of the misconduct, you will take into account evidence of any relevant contextual factors. We would suggest there are none.*

*16. The Panel have already fully reviewed the evidence and it is not necessary to recite all of the facts here. However I draw your attention to how the witness found out about the breach (audit) and the calls to the NMC required to fact find the reasons behind the COP (Page 56)*

*"The Code" (2015)*

*17. The NMC say that "The Code" has been breached. We would suggest that the following particular areas of the code being engaged are;*

*18. Section 4 – Act in the best interests of people at all times: 4.1, 4.2*

*19. Section 6 – Use best practice 6.2*

20. *Section 8 - Working cooperatively: 8.1, 8.2, 8.3, 8.4, 8.5, 8.7*

21. *Section 13 – Recognise and work within the limits of your competence- 13.1, 13.2, 13.3, 13.5*

22. *Section 16 – Act without delay if there is a risk to patient safety: 16.5, 16.6*

23. *Section 20 - Uphold the reputation of the profession – 20.1, 20.2, 20.3, 20.5, 20.8*

24. *The Panel may, be particularly concerned about*

- *Breaching a Panel Order*
- *Three Counts of Dishonesty*
- *Accountability in practice*
- *Failure to uphold the standards of the profession*
- *Failure to Comply with the directions of the order*
- *The Nurses duty of candour*

*These factors can have a serious effect on workplace culture, and therefore patient safety if it is not dealt with effectively. This we say underpins the need to identify this behaviour as serious misconduct in the case of Mr Ubom.'*

The panel then heard submissions from you in relation to misconduct and impairment.

You submitted that you are not impaired, as you have been working as a mental health nurse professionally without any problem. You went on to say that your submissions were all contained in the email you sent to the NMC at 12:25 on 5 February 2024:

*'I am writing this little note from my innermost being, after inclining to solitude and asking myself many questions, some I asked, myself and I answered them*

*by myself and some the answers are blowing in the wind, the incident which I am in now happened 2017, may, precisely on Sunday, this is seven years ago, as W. B. will be it, "turning and turning in the widening gyre, the falcon cannot hear the falconer; things fall apart; the centre cannot hold; mere anarchy is loosed upon the world", (Second coming), I will ask NMC, [PRIVATE] Since this incident took place, I have been working in the same capacity, as mental health Nurse, has the same incident repeated itself (NO) what does that tell you. I am very much disappointed in the way and manner, I am being treated, why torturing me, why all the torment [PRIVATE] why, all these, sanctions you have placed on career , my pin had flagged, each year hearing is held, once or twice, asking me the same question, year after year with different faces, each sitting with different, method of hearing, what is it about if I may ask. Now you (NMC) have succeeded in throwing me out work, [PRIVATE] You are doing your job, that could be the answer. It would be wonderful if life never tempted me, I could just go day-to-day, winging it and always do things without mistakes, but that is not how the world is, that is not who humanity is [PRIVATE] and perils, with enough opportunities, eventually we will make mistake and things will goes wrong, as such we will drift, [PRIVATE] ., this is the more reason, [PRIVATE], and advisers, mentors to mention but a few, with all due respect, I would have love to see NMC in this light, but regrettably, it is the opposite. For how long will this continue, not long, NMC has made my life so complicated, more importantly, very exhausting, how long, not long, NMC terminated my pin, [PRIVATE], how long, not long, NMC weaponised Tall Trees(CareUK), to bully, torment, [PRIVATE], hopefully you(NMC) is happy, how long, not long. At the moment [PRIVATE] how long, not long. [PRIVATE] I am always wondering how I can do better and how, I can escape a bully's voices from Tall trees management, I am also stunted because of the constant tension, The best I could do to helping myself is to resign from a toxic environment, at the moment , [PRIVATE], but tell yourself, I have to go to work, as a human being, NMC and Tall Trees Nursing home, have destroyed for me this God giving talent, I started this job as a support worker, from 2002*

*to 2014, saw myself through University and qualified in 2014, with BSc in mental health nursing, and today NMC is telling me, I am impaired, but I kept, saying to myself, I am not impaired, please, because, "The impediment to action advances action, what stands in the way becomes the way" meaning that failure is just an opportunity, it is a chance to be better, to do better, to start over, to re-evaluate, to practice diligently. Does NMC know this, maybe or maybe not. I am going to do what I was born for or is this what I was created for, to care for the elderly(yes) or must I huddle under the blankets and stay warm, at the moment the answer is blowing in the wind, because I have no job. I am seeing my condition as Franz Kafka in his book(metamorphosis), human race to him was [PRIVATE], for me it is absurd, I am seeing that my whole human race is a product of one of "God's bad days", [PRIVATE], NMC has weaponised Tall Trees Nursing to dumping Ekerette J. Ubom in this [PRIVATE] situation, At the moment I submit case, bye and large dead people do not stand trial. What do you expect from a man you(NMC) have so destroyed. Please Madam, could you submit this Thank you note to NMC Panel Thank you E James Ubom most regard with due respect'*

### **Panel's decision on misconduct**

In relation to misconduct, the panel noted that you did not comply with the previous conditions which were placed on your practice following your fitness to practise hearing on 26 November 2021. You failed to implement these as required. The panel found you to have a lack of understanding or respect for the role of the NMC as your regulator. The panel stated that you knowingly disregarded the decision of your regulator. This is a serious matter.

Your actions within the charges found proved fall far below the standards expected of a registered nurse and would be considered deplorable by other members of the profession. Your dishonesty, in not having not told your employer about your regulator's investigation, hearing, findings and order, and then being dishonest about this, is inherently serious.

The panel determined that you have breached fundamental areas of the NMC Code, and highlighted the following sections which relate to your misconduct:

*'NMC: The Code, Professional standards of practice and behaviour for nurses, midwives and nursing associates'*

*4) Act in the best interests of people at all times*

*6.2) maintain the knowledge and skills you need for safe and effective practice*

*8.5) work with colleagues to preserve the safety of those receiving care*

*8.6) share information to identify and reduce risk*

*13) Recognise and work within the limits of your competence*

*13.3) ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*

*13.5) complete the necessary training before carrying out a new role*

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

*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, treating people fairly and without discrimination, bullying or harassment*

*20.3) be aware at all times of how your behaviour can affect and influence the behaviour of other people*

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

Consequently, the panel found that the facts found proved amount to serious misconduct due to your actions and lack of compliance with the regulatory order, and the surrounding dishonesty.

### **Decision and reasons on impairment**

The panel next went on to decide if your fitness to practise is currently impaired.

The panel took into consideration of Mr Radley's submissions in relation to impairment, which stated as follows:

1. *'The Panel are now considering whether Mr Ubom's fitness to practise 'is impaired' (Art 22(1)(a) of the Nursing and Midwifery Order 2001).*
2. *Impairment is not defined in the legislation.*
3. *There have been many legal cases which have developed the concept of impairment and the factors that should be considered when deciding whether a professional's fitness to practise is impaired. The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise  
Kindly, safely and professionally?"*

4. *Consideration has been given to the nature of the concern by looking at the factors set out by Dame Janet Smith in her Fifth Report from Shipman, approved in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) by Cox J;*  
  
*"Do our findings of fact in respect of the [nurse'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 professions 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 professions; and/or*
- d. *Has in the past acted dishonestly and/or is liable to act dishonestly in the future?*
5. *If the Panel make the decision on the facts that Misconduct is found. The panel will next be deciding whether the professional's fitness to practise is impaired. The NMC represent that this question is answered positively. The NMC represent that the professional's fitness to practise is impaired particularly by way of D above, Dishonesty.*
6. *A decision about whether a professional's fitness to practise is impaired takes a holistic approach, so that anything that's relevant is considered. It is dependent on the individual circumstances surrounding each concern.*
7. *The panel will no doubt ask themselves if any part of the CODE has been breached or is liable to be breached in the future. Any breach would be considered alongside other relevant factors.*
8. *The NMC refer the panel to the earlier concerns on the breaches of the CODE.*
9. *The NMC say that the breaches of the Code involves breaching a fundamental tenet of the profession, the Panel would be entitled to conclude that a finding of impairment is required in Mr Ubom's case. The finding of impairment, the NMC assert, is required to mark the unacceptability of the behaviour, emphasise the importance of the fundamental tenet breached, and to reaffirm proper standards or behaviour (see *Yeong v GMC [2009] EWHC 1923 (Admin) Hamer para 36.07*).*
10. *The Fitness to Practise Panel will consider the context in which things have happened. Here the panel will be asked to consider;*
- *Personal factors relating to the professional*
  - *The professional's working environment and culture*

- *The reasoning behind why the COP order was the sanction leading to the breach here*

11. *The NMC say this does substantially adversely affected the professional's ability to practice professionally and as a consequence the professional will not be able to demonstrate that they are currently able to practise kindly, safely and professionally.*

12. *The third area of context is the learning, insight and steps the professional has taken to strengthen their practice. Here the professional has provided limited engagement in the process however has attended virtually to make admissions at the door of the final hearing when witnesses had been warned to attend and case was fully prepared. There is no evidence that he has addressed or taken steps to address any concerns or risks identified in the case. The professional has not provided:*

- *evidence of further relevant training or supervision*
- *No reflection, or understanding of the issues raised in the proven allegations*
- *No insight / acceptance regarding the proven allegations*
- *details of steps taken to address the concerns raised by the proven allegations*
- *evidence from others as to current skills and fitness to practise (references)*

*Whether it is likely that the conduct will be repeated is also a concern for the NMC. This will impact on the professional's ability to practise kindly, safely, and professionally, resulting in the NMC, suggest a finding of impairment.*



13. *The consequences of the professional's conduct could have affected patient care and could have been very serious.*

*For these reasons the NMC say that Mr Ubom's practice is currently impaired.'*

The panel also took into consideration your written and oral submissions in relation to impairment. You submitted that you are not impaired professionally as you have worked as a mental health nurse in a professional manner, without any problems.

You submitted that you are '*very sceptical*' in your own way of '*looking at things*', continuing on to state that since the beginning of this situation, you have been going through rigorous training in order to improve your practice. You submitted that you decided to study *Abnormal Psychology* in your PhD programme at Essex University [PRIVATE]. You further stated that you have undertaken a course called '*Foot Health Care*', specifically for the care of diabetic patients. The panel have not seen any documentary evidence of any training courses.

You submitted that you do not understand the situation currently, and why this NMC process is continuing. You submitted that you have struggled to find relevant documents you would have liked to have placed before the panel, as, after having moved homes, your belongings have been '*haphazardly displaced*'.

The panel then provided you with a period of time to acquire the relevant documents you would like to present before them.

You provided the panel with three new testimonials from a work colleague, a patient who had been under your care, and their relatives, exhibiting both your good character and good practice.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

*'The question that will help decide whether a professional's fitness to practise is impaired is:*

*"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*

*If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not impaired.'*

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

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/their fitness to practise is impaired in the sense that S/He/They:*

- 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 your conduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel determined that all four limbs of Grant were fully engaged.

Regarding insight, the panel noted that the previous panel concluded that you, at the time, had developing insight. However, in this hearing, the panel determined that you have expressed no clear insight into the current charges. The panel considered that you have not given any regard to the effects your actions had on residents, their families, their carers, your colleagues, or the nursing profession.

The panel took account of the reflective piece you have provided and determined that the contents of this focused more on your own personal health and the impact these

proceedings have had on you. It determined that your reflective piece did not sufficiently address the charges against you. [PRIVATE]

In regard to remediation, the panel determined that the testimonials provided by you, although positive, were more relevant to the previous NMC hearing. They have little relevance in relation to these current charges, particularly relating to your dishonesty. The panel highlighted that two of the three testimonials were not dated, and the remaining one was dated from 2021. The panel determined therefore, that this was not relevant to the current charges which are engaged.

Although the panel have seen information relating to your Continual Professional Development (CPD) from your previous hearing, they have not seen any significant information in relation to these charges, in particular, addressing your dishonesty. The panel highlighted that dishonesty is the hardest type of charge to remediate, and that given your lack of training courses, no reflective piece, or any other substantial information, there is nothing to suggest that you will not repeat this behaviour. Consequently, the panel determined there is no remediation.

The panel therefore decided that a finding of impairment is necessary on the grounds of both public protection, and in the wider public interest. Your actions in the charges found proved are serious, and, if repeated, could cause both harm and damage the reputation of the profession and that of the regulator. A well-informed member of the public would expect a nurse facing such charges, particularly ones relating to dishonesty, to have their practice found impaired.

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

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 striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

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

## **Submissions on sanction**

Mr Cassells 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 it found your fitness to practise currently impaired.

Mr Cassells submitted that no further action or a caution order would not be appropriate in view of the seriousness of this case. He submitted that this case is not at the lower end of the spectrum of impaired fitness to practice, and that there is a risk to both the public and to patients.

Mr Cassells stated that a conditions of practice order would not be appropriate, as there are no areas of practice in need of assessment or training. He highlighted that the issue in your case is more fundamental, as you are someone who has lied to your employer, and to the regulator.

In relation to a suspension order, Mr Cassells submitted that there are *'no features of this case which map onto those which is suggested might mean a suspension order is appropriate'*, according to the guidance published by the NMC.

Mr Cassells said that this is not a single instance of misconduct. You lied repeatedly over a 6-month period, and through those lies, worked in breach of an order imposed by your regulator.

Mr Cassells stated that there is clear evidence of a harmful, deep seated and attitudinal problem. He stated that this was not a matter of dishonesty which occurred in a moment of panic and immediate regret. Mr Cassells submitted that your dishonesty was a sustained course of conduct only brought to an end when you were *'found out'* by your employers' governance processes. He highlighted that there is no assumption to be made that you would have made an admission of your dishonesty, if you were not discovered to have been lying.

Mr Cassells submitted that there has not been a repetition of your behaviour since the incident. However, you did not act with honesty or integrity. He submitted that you have presented no clear insight.

Mr Cassells further submitted that the NMC says that a striking off order is the only sanction which would appropriately address the issues in this case. He highlighted the Sanctions Guidance, which suggests that such a sanction should only be imposed if the panel are satisfied that you has done something fundamentally incompatible with continued registration. Your dishonesty was aimed directly at not jeopardising your employment position, which could be considered as a personal financial gain from a breach of trust. Further, there was a direct risk to patients, as you were not safe to practise without restriction, you ignored your regulator, and *'sidestepped'* the order imposed on your practice. Finally, Mr Cassells submitted that your actions were premeditated, systematic, and relate to a long-standing deception.

Mr Cassells referred again to the NMC's guidance on considering sanctions in serious cases and noted that this type of misconduct '*will be taken very seriously*' that it '*likely shows a disregard for the steps the NMC has put in place to keep the public safe and uphold confidence in the professions*' and that '*deliberate noncompliance*' [...] '*is likely to call into question whether that person should remain on the register*'.

Within his submissions, Mr Cassells referenced the following cases to substantiate his position on the severity of your dishonesty: *GMC v Theodoropoulos [2017] EWHC 1984 (admin)*, *Sansui v General Medical Council [2019] EWCA Civ 1172* , and *GMC v Donadrio [2021] EWHC 562 (Admin)*.

Consequently, Mr Cassells submitted that the NMC say that only a striking off order is appropriate and proportionate in this case. A common-sense analysis without any assistance from guidance or case law would lead to the conclusion that the conduct here is of the utmost seriousness. He submitted that the higher courts would expect this sanction in such a case as this and suggests that any sanction other than a striking off order would be unduly lenient.

The panel also bore in mind your submissions.

You provided an analogy for the panel regarding the concept of punishment. This included a depiction of being sent out into the woods.

You submitted that you have received '*sanction after sanction*' and have completed all that was asked of you from the NMC. You submitted you are now confused why it has taken so long to lead to a possible striking-off of your PIN.

You submitted that you '*do not know*' if your suggestion will be taken into consideration. You suggested the panel to give you a suspension order for a period of one year as you still love your job, have studied for it, and you love the people you deal with. You

submitted that a suspension order would help by providing you with time to undergo more training and enable you to be more cautious in your practice.

The panel heard and accepted the advice of the legal assessor, referencing the following cases: *Parkinson (2010) EHC 1898 (Admin)* and *Sharma 2010) EHC 2022 (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 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:

- You behaviour was dishonest;
- You had breached your conditions of practice order;
- You concealed the NMC investigations hearing and sanction from your employer;
- You had a disregard for the NMC as the regulator;
- Your misconduct was not an isolated incident;
- Your misconduct was persistent, longstanding, and egregious;
- Your misconduct put patients and staff members at serious risk of harm.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, the extent of your dishonesty, your lack of insight or remediation,



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 seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case relates to dishonesty, which is not something that can be addressed through retraining. Furthermore, 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. Finally, the panel took account of the fact that the charges against you relate to you having breached the previous conditions of your practice and were not in relation to any clinical failings.

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:

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

- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of fundamental tenets of the nursing profession evidenced by your actions is fundamentally incompatible with your remaining on the register. The panel determined that your dishonesty has not been remediated, and you have not shown any insight into your misconduct.

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

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

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

Your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case demonstrate that your actions were

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

The panel determined that your dishonesty was significant in that you were not open and honest with the previous panel. Further, you were deliberately breaching your condition of candour by not declaring you were on a conditions of practice to your employer, which put patients at risk of harm as there were clinical issues. The panel have assessed that, as a direct risk to patients. The panel determined that this was not a less serious case of dishonesty, and that it was not opportunist, spontaneous conduct, but was instead premeditated. The panel highlighted that you have presented no insight or remorse into your actions.

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

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

This will be confirmed to you in writing.

### **Application on interim order**

Mr Radley submitted made an application for an interim suspension order. He submitted that there is a prima facie case, and that this application is being made for the protection of the public, and in the public interest.

Mr Radley made this application for a period of 12 months, in the case that you may submit an appeal.

You said that you are currently not working in a medical field, and that you intend to appeal and have no intention of seeking employment as a nurse whilst you appeal. You submitted that an order is not necessary.

The panel accepted the advice of the legal assessor.

### **Decision and reasons on interim order**

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

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

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

That concludes this determination.