

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

**Substantive Hearing
11-14 November 2019**

Nursing and Midwifery Council, 114-116 George Street, Edinburgh, EH2 4LH

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| Name of Registrant Nurse: | Yasmin Qadeer |
| NMC PIN: | 93D0930E |
| Part(s) of the register: | Registered Nurse – Sub Part 1 RNA: Adult – 22 September 2003 |
| Area of Registered Address: | England |
| Type of Case: | Misconduct |
| Panel Members: | Malcolm Davidson (Chair, Lay member) Sandra Lamb (Registrant member) Alex Forsyth (Lay member) |
| Legal Assessor: | Michael Bell |
| Panel Secretary: | Lucy Eames (11-13 November 2019) Catherine Acevedo (14 November 2019) |
| Registrant: | Not present and not represented in absence |
| Nursing and Midwifery Council: | Represented by Alastair Kennedy, Case Presenter |
| Facts proved: | All |
| Fitness to practise: | Impaired |
| Sanction: | Striking-off order |
| Interim Order: | Interim suspension order (18 months) |

Details of charge as amended:

That you, a registered nurse,

1. During the process of applying for employment at Airedale General Hospital you did not declare one or more of the following matters

1a) your period of employment at Primrose Surgery;

1b) that you were subject to a 5 year Caution Order made by the Conduct and Competence Committee of the Nursing & Midwifery Council on 03 August 2016.

2. Your conduct at Charge 1a and/or Charge 1b above was dishonest as in not disclosing these facts you sought to conceal your previous fitness to practise history.

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

Decision on Service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Qadeer was not in attendance and that written notice of this hearing had been sent to her registered address by recorded delivery and by first class post on 9 October 2019. Royal Mail's track and trace service indicated that the notice was returned to sender as it had exceeded the holding period at Keighley Enquiry Office. Further, the panel noted that notice of this hearing was also sent to Mrs Qadeer's representative on 9 October 2019.

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

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

The panel accepted the advice of the legal assessor.

In the light of all of the information available, the panel was satisfied that Mrs Qadeer has been served with notice of this hearing in accordance with the requirements of Rules 11 and 34. It noted that the rules do not require delivery and that it is the responsibility of any registrant to maintain an effective and up-to-date registered address.

Decision on proceeding in the absence of the Registrant

The panel next considered whether it should proceed in the absence of Mrs Qadeer.

The panel had regard to Rule 21 (2) which states:

- (2) Where the registrant fails to attend and is not represented at the hearing, the Committee—
- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
 - (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
 - (c) may adjourn the hearing and issue directions.

Mr Kennedy invited the panel to continue in the absence of Mrs Qadeer on the basis that she had voluntarily absented herself.

He referred the panel to a proceeding in absence bundle which included a number of emails and telephone notes from calls between an NMC case officer and Mrs Qadeer and her representative. Mr Kennedy referred the panel to an email, dated 4 November 2019, from Mrs Qadeer's representative which stated 'There are no further requests from me. Having spoken to Yasmin I think she is happy for the hearing to go ahead, however she is unable to attend. You will need to contact her to confirm that.'

Further, Mr Kennedy referred the panel to a telephone note from a call between an NMC case officer and Mrs Qadeer, dated 5 November 2019, which stated she 'did not want the hearing to be postponed and would like it to proceed in her absence...she did not want the hearing dragging on...she would be available via telephone at any point in the hearing if the panel had questions for her'.

Mr Kennedy submitted that there was no reason to believe that an adjournment would secure Mrs Qadeer's attendance on some future occasion. He invited the panel to consider that a number of witnesses are due to attend today and tomorrow and not

proceeding would inconvenience them. Mr Kennedy submitted that, although Mrs Qadeer has stated she would be available via telephone if needed, the panel should consider whether to proceed in her absence entirely.

The panel accepted the advice of the legal assessor. He told the panel that it should consider whether to proceed in Mrs Qadeer's absence on the information currently before it. If there was a material change in circumstances and the panel considered that it may be appropriate that Mrs Qadeer participates via telephone at parts of the hearing that could be considered as and when such issues may arise.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised "*with the utmost care and caution*" as referred to in the case of *R. v Jones (Anthony William)*, (No.2) [2002] UKHL 5.

The panel decided to proceed in the absence of Mrs Qadeer. In reaching this decision, the panel has considered the submissions of the case presenter, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *Jones*. It had regard to the overall interests of justice and fairness to all parties. It noted that:

- no application for an adjournment has been made by Mrs Qadeer;
- she wants the hearing to proceed in her absence;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- two witnesses are attending today to give live evidence; more witnesses are due to attend tomorrow;
- not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- further delay may have an adverse effect on the ability of witnesses to accurately recall events;
- there is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Qadeer in proceeding in her absence. The evidence upon which the NMC relies will have been sent to her at her registered address. Mrs Qadeer will not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on her own behalf. However, in the panel's judgment, this can be mitigated. The panel has had sight of correspondence from Mrs Qadeer and her representative that, in general terms, sets out her position in relation to the allegations. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Qadeer's decision to absent herself from the hearing, waive her right to attend and/or be represented and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Mr Kennedy under Rule 31 of the Rules to allow a supplementary statement of Ms 1 into evidence and to allow a new witness, Ms 2, to give evidence. In relation to the supplementary statement of Ms 1, Mr Kennedy explained to the panel that this was obtained by the NMC on 12 October 2018 but was mistakenly not served on Mrs Qadeer at the time. Mr Kennedy told the panel that this omission was noticed last week and the supplementary statement was emailed to Mrs Qadeer last Friday (8 November 2019). He said that there has been no comment from Mrs Qadeer regarding this.

Mr Kennedy told the panel that Ms 1's supplementary statement talks about the options in an NHS application form and submitted that it is therefore relevant to the charges. Mr Kennedy also submitted that it would be fair to admit this supplementary statement into

evidence and referred the panel to the case of *PSA v NMC & Jozi* [2015] EWHC 764 (Admin).

In relation to Ms 2, Mr Kennedy informed the panel that the NMC obtained a witness statement from her last week as it had not been able to contact her before this. Ms 2 has retired from nursing and the NMC was only able to make contact with her about 10 days ago. Mr Kennedy told the panel that her witness statement was served on Mrs Qadeer on Friday 8 November 2019.

Mr Kennedy submitted that Ms 2 interviewed Mrs Qadeer for a post in the emergency department at Airedale General Hospital (the Hospital), therefore her evidence is relevant to the charges and the panel should see her statement and allow her to give evidence. Mr Kennedy added that it had originally been the NMC's intention to adduce hearsay evidence in relation to Ms 2, however that is no longer necessary as she has provided a statement and is attending to give evidence.

Mr Kennedy also made an application in relation to Ms 3. Mr Kennedy told the panel that she is a Practice Manager at a GP surgery and would not be available to be present at this hearing. Whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend in person but would be available via telephone. Mr Kennedy reminded the panel that an order from the High Court requiring witness attendance could not compel a witness to attend a hearing in Scotland.

Mr Kennedy submitted that Ms 3's evidence is relevant as she can speak to Mrs Qadeer's employment at Grange Medical Centre and whether she informed them of her caution order. Mr Kennedy invited the panel to consider that Ms 3's evidence is relatively uncontroversial and submitted that it would be fair to hear her evidence via telephone. Mr Kennedy told the panel that there is some disadvantage in telephone evidence as the panel would not be able to assess the witness' demeanour, however he submitted that this could be mitigated. Mr Kennedy submitted that it would be fair and relevant to allow Ms 3 to give her evidence via telephone.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of the applications. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*,' a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. He referred the panel to the case of *Suddock v NMC* [2018] EWHC 3612 (admin).

The panel considered Ms 1's supplementary statement to be highly relevant. It noted that it directly related to the application form Mrs Qadeer filled in when applying for her role at the Hospital. The panel was of the view that it was not ideal that the supplementary statement was only emailed to Mrs Qadeer on 8 November 2019 but accepted that it was still served on her before the hearing and she could quickly reply if she had any issues with it. The panel considered that any potential prejudice to Mrs Qadeer was limited. The panel further took into account that any prejudice to Mrs Qadeer in this statement being admitted into evidence was outweighed by the public interest. The panel therefore determined that it was fair and relevant to admit Ms 1's supplementary statement into evidence.

The panel considered Ms 2's evidence to be relevant as she, along with Ms 4, interviewed Mrs Qadeer at the Hospital. It took into account that the NMC had made attempts to contact Ms 2 at an earlier stage but had been unable to make contact until around 10 days ago. The panel noted that the NMC had intended to adduce hearsay evidence but now Ms 2 is available it determined that live evidence is preferable to hearsay evidence. The panel further noted that Ms 4 was due to give evidence today and therefore their evidence could be compared. The panel therefore determined that it was fair and relevant to allow Ms 2's statement to be admitted and for her to give live evidence before the panel.

The panel considered Ms 3's evidence. It noted that she was not able to attend in person but had a valid reason as she is currently working. The panel noted that Ms 3 worked directly with Mrs Qadeer at Grange Medical Centre and her evidence is therefore relevant. Further, having been told that the evidence is uncontroversial, the

panel determined that it would be fair to hear evidence from Ms 3 over the phone. The panel took into account that it would not be able to consider Ms 3's demeanour over the phone but noted the legal assessor's advice that this was not the sole way to assess her evidence. The panel determined that telephone evidence is preferable to no evidence and determined that it would be fair and relevant to allow Ms 3 to give evidence via telephone.

The panel considered whether Mrs Qadeer would be disadvantaged by these changes. The panel considered that Mrs Qadeer had been provided with copies of all the witness statements and has had opportunity to raise issue with them. The panel considered that there was also public interest in the issues being explored fully which supported the admission of Ms 1 and Ms 2's witness statements and Ms 3's telephone evidence into the proceedings.

In these circumstances, the panel came to the view that it would be fair and relevant to allow all the applications by Mr Kennedy and would give what it deemed appropriate weight to the evidence once the panel had heard and evaluated all the evidence before it.

Background

Mrs Qadeer first registered as a nurse in September 2003. Up until July 2016 the majority of her roles were in GP surgeries. Mrs Qadeer became the subject of a caution order in August 2016 which arose from an incident during her employment at Primrose Surgery.

In February 2017 Mrs Qadeer applied for a staff nurse role at the Hospital and was successful. In May 2017, during HR background checks, Mrs Qadeer's caution order was discovered. Mrs Qadeer is said not to have declared her caution order during the application process. No part of the application form specifically asks about caution orders but there were parts of the form in which Mrs Qadeer could have declared it.

There was a declaration regarding openness at the end of the application form. It is also alleged that Mrs Qadeer did not declare her caution order at the interview, although the interviewers did not specifically ask.

Further Rule 31 application

Mr Kennedy informed the panel that Ms 5 was not in attendance, nor was she available to give evidence remotely. He therefore made an application for her statement to be read and referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). Mr Kennedy referred the panel to various points it would need to consider when deciding on this application.

Mr Kennedy told the panel that Ms 5's evidence is not the sole and decisive evidence for a certain charge in this case. He submitted that, as Mrs Qadeer is not aware of this application or the reasons for it, the panel may want to consider contacting her as there has been a change in circumstances. Mr Kennedy told the panel that, although she has engaged with the NMC to an extent, Mrs Qadeer did not complete a Case Management Form (CMF). Mr Kennedy submitted that, if the statement is read, the panel may find that it was clear Mrs Qadeer knew of the requirement to inform her employer of her caution order. On the other hand, the panel may find that Mrs Qadeer told two employers of her caution order, therefore it would be more than likely that she also told the Hospital.

Mr Kennedy told the panel that Ms 5 had a good reason to not attend to give evidence as she was not warned by the NMC in good time. He explained that Mrs Qadeer's case had a change in case officer and the second one was off work sick for a period of time. Mr Kennedy said that only one witness was warned for this hearing, but the NMC managed to obtain four, however not Ms 5. Mr Kennedy submitted that this was an error by the NMC. It was discovered on 4 November 2019 at which point Ms 5 was telephoned but there was no answer. Ms 5 was again telephoned on 7 November 2019 but there was no answer. She was emailed on 8 November 2019 inviting her to give

evidence either in person or remotely, but there has been no reply to this email. Mr Kennedy told the panel that there is no blame on Ms 5.

Mr Kennedy submitted that it would be relevant and fair for Ms 5's statement to be read in the circumstances. Mr Kennedy added that the statement may be favourable to Mrs Qadeer and therefore the fairness is both to the NMC and her.

The panel accepted the legal assessor's advice.

The panel was of the view that it would be fair to contact Mrs Qadeer regarding this issue as there has been a change in circumstances. It noted that Mrs Qadeer said in her call with her NMC case officer on 5 November 2019 that she would be available via telephone at any point in the hearing if she needed to be contacted. The panel determined that attempts should be made to contact Mrs Qadeer and Mr Kennedy's application explained to her. It would make a decision on this application, once this has happened.

After a short adjournment, Mr Kennedy informed the panel that Mrs Qadeer's NMC case officer had contacted her and received a reply. Mrs Qadeer was informed of the following:

- *The witness is unable to attend the hearing either in person or by phone as the NMC did not warn her to attend. That was the NMC's mistake. Once the error was noticed, unsuccessful attempts were made to contact the witness.*
- *The NMC's position is that the witness' evidence is relevant to the charges – in particular charge 2, the dishonesty charge.*
- *The evidence can be viewed in 2 ways:*
 1. *It shows that Mrs Qadeer was aware of an obligation on her to tell her employers about the previous NMC case. She did inform two employers about it. Her failure to disclose the outcome of that case to her prospective employers at Airedale General Hospital was a deliberate act designed to mislead them in relation to her true*

professional history as a nurse. This interpretation of the evidence could go against her in the current hearing.

2. It shows that Mrs Qadeer was aware of an obligation on her to tell her employers about the previous NMC case. She did inform two employers about it. The fact that she didn't disclose to her prospective employers at Airedale General Hospital was an oversight and was not a deliberate act. Given her history of disclosing to other employers, it is more likely than not that the omission was accidental.

- It is a matter for the panel which interpretation they prefer. They may have one of their own.*
- It is not a foregone conclusion that the NMC's application will be granted. The panel will only grant it if it feels that the evidence in the statement is relevant to the charges and that it would be fair to admit it.*
- If the decision is to admit the statement, the panel can decide what weight, if any, should be attached to it given that its author has not been subject to cross-examination or questioning by the panel.*
- If Mrs Qadeer wants to address the panel on this application, she can do so by conference call.*
- If Mrs Qadeer wants to take advice before deciding whether or not to oppose the NMC's application, she is free to do so.*

Mrs Qadeer told her NMC case officer that she did not want Ms 5 to attend as she does not disagree with the contents of her statement. Mrs Qadeer said that Ms 5 was only doing her job and does not require her to attend the hearing. Mrs Qadeer did not want to address the panel as she is currently at work. Mrs Qadeer did not object to the statement being read into the record of proceedings.

The panel considered Mr Kennedy's application and determined to allow it. It noted that Mrs Qadeer did not object to Ms 5's statement being read. The panel determined that Ms 5's witness statement is relevant to the charges and potentially relevant to any further stages of this hearing. The panel determined that it would be fair to allow Ms 5's

statement to be read given that Mrs Qadeer did not object and that parts of the statement could be in Mrs Qadeer's favour.

Decision and reasons on application to amend the charge

During closing submissions on fact, Mr Kennedy made an application to amend the wording of charge 1b.

The proposed amendment was to amend the allegation to reflect the date on which Mrs Qadeer's became subject of a caution order, rather than the date of the determination. It was submitted by Mr Kennedy that the incorrect date of the imposition of the caution order was an administrative error and the proposed amendment would provide clarity and more accurately reflect the evidence. Further, amending this charge would not affect the other charges.

Original charge:

- 1. During the process of applying for employment at Airedale General Hospital you did not declare one or more of the following matters*

1b) that you were subject to a 5 year Caution Order made by the Conduct and Competence Committee of the Nursing & Midwifery Council on 01 July 2016.

Proposed amendment:

- 1. During the process of applying for employment at Airedale General Hospital you did not declare one or more of the following matters*

1b) that you were subject to a 5 year Caution Order made by the Conduct and Competence Committee of the Nursing & Midwifery Council on 03 August 2016.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Qadeer and no injustice would be caused to either party by the proposed amendment being allowed. It noted that amending the charge in the proposed way would not change the alleged mischief in this case as Mrs Qadeer was still under a caution order throughout the time of the charges. It further noted that neither Mrs Qadeer nor her representative were contesting that she was subject to a caution order during the period of the allegations. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Kennedy on behalf of the NMC.

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

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

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

The panel heard oral evidence from five witnesses tendered on behalf of the NMC.

Witnesses called on behalf of the NMC were:

Ms 4 – Emergency Department Nurse Manager at Airedale NHS Foundation Trust;

Ms 2 – Senior Sister at the Hospital;

Ms 1 – NHS Jobs Manager;

Ms 6 – Practice Manager at Primrose Surgery;

Ms 3 (via telephone) – Practice Manager at the Grange Medical Centre.

The written statement of Ms 5, Practice Manager at Park Grange Medical Centre, was read into the record by Mr Kennedy.

Job titles are correct at the time of the charges.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from.

The panel found Ms 4 gave detailed evidence and found her to be credible, clear and reliable. She had good recollection of the interview with Mrs Qadeer and noted that she was clear that she would have made a note had Mrs Qadeer declared her caution order in the interview.

The panel found Ms 2 to be a credible and reliable witness. It noted that she was giving evidence on a focused point and found her to be genuine.

The panel found Ms 1's evidence to be helpful and informative about the application process. It found her to be credible and reliable.

The panel found Ms 6 to be credible and was of the view that there was no reason to doubt her evidence. It noted that her evidence was uncontroversial and she confirmed Mrs Qadeer's employment at Primrose Surgery.

The panel found that Ms 3 had good recollection and was credible. Ms 3 also confirmed Mrs Qadeer's employment dates at Grange Medical Centre.

The panel considered that Ms 5's witness statement was unchallenged and uncontroversial and therefore gave it appropriate weight.

The panel took into account Mrs Qadeer's written submissions but noted that they had not been tested at this hearing.

The panel considered each charge and made the following findings:

Charge 1a:

In respect of both charges 1a and 1b the panel determined that the application process comprised Mrs Qadeer's completion of the application form and her subsequent interview.

1. During the process of applying for employment at Airedale General Hospital you did not declare one or more of the following matters

1a) your period of employment at Primrose Surgery;

This charge is found proved.

In reaching this decision, the panel took into account the application form Mrs Qadeer completed for the role at the Hospital. The panel noted that there was no mention of her period of employment at Primrose Surgery, despite having worked there for 17 months. It noted that there was an annotated note on the application form which stated 'employment dates at Primrose Surgery Bradford', however the panel was satisfied that this was written by a matron at the investigation stage, as stated by Ms 4 who identified the handwriting. The panel took into account Mrs Qadeer's explanation for not including her Primrose Surgery employment on the application form saying that it was a mistake. The panel therefore determined that Mrs Qadeer accepted that she had not included it. The panel also took into account Ms 1's evidence in which she was clear that the form asked for 'full employment history'.

The panel took into account Ms 4's evidence in which she confirmed Mrs Qadeer had not declared her employment at Primrose Surgery at the interview. It noted that Ms 2 confirmed this in her evidence.

The panel noted Mrs Qadeer's explanation in her written submissions, which appeared to suggest that she disclosed her employment at Primrose Surgery at the interview. The panel reminded itself that Mrs Qadeer's evidence had not been tested. Taking all the evidence before it into account the panel did not accept Mrs Qadeer's explanation. The

panel preferred the evidence of Ms 4 and Ms 2 which corroborated each other's and had been tested.

The panel therefore determined that Mrs Qadeer, on the balance of probabilities, did not declare her period of employment at Primrose Surgery during the process of applying for employment at the Hospital and therefore found this charge proved.

Charge 1b:

1. During the process of applying for employment at Airedale General Hospital you did not declare one or more of the following matters

1b) that you were subject to a 5 year Caution Order made by the Conduct and Competence Committee of the Nursing & Midwifery Council on 03 August 2016.

This charge is found proved.

The panel had restricted sight of the section of the determination from Mrs Qadeer's previous substantive hearing relating to the sanction imposed. It was satisfied that Mrs Qadeer was the subject of a caution order on 3 August 2016.

In reaching this decision, the panel took into account the application form Mrs Qadeer completed for the role at the Hospital. The panel noted that there was no mention of her caution order. It further, noted that there was no specific question regarding NMC caution orders on the application form but was of the view that it could have been declared in the 'supporting information' section. The panel took into account that Mrs Qadeer had not contested that she did not include the caution order on the application form. The panel therefore determined that Mrs Qadeer accepted that she had not included it.

The panel took into account Ms 4's and Ms 2's strong evidence in which they both confirmed Mrs Qadeer had not declared her caution order at the interview. Ms 4 stated that she would have written a note of it but her notes had no mention of any NMC proceedings. Further, both witnesses told the panel that there were discussions at the interview regarding patient safety, to which Mrs Qadeer mentioned a particular example that she had been involved in but said that this had been dealt with locally; she made no mention of any NMC regulatory proceedings or caution. Ms 4 and Ms 2 confirmed that, had the caution order been declared, it would have been part of their considerations when offering the role.

The panel noted Mrs Qadeer's explanation in her written submissions that she had disclosed her caution during the interview. The panel reminded itself that Mrs Qadeer's evidence had not been tested. Taking all the evidence before it into account the panel did not accept Mrs Qadeer's explanation. The panel preferred the evidence of Ms 4 and Ms 2 which corroborated each other's and had been tested.

The panel therefore determined that Mrs Qadeer, on the balance of probabilities, did not declare her caution order during the process of applying for employment at the Hospital and therefore found this charge proved.

Charge 2:

2. Your conduct at Charge 1a and/or Charge 1b above was dishonest as in not disclosing these facts you sought to conceal your previous fitness to practise history.

This charge is found proved.

In reaching this decision, the panel took into account that Mrs Qadeer had a duty to declare the information set out in charges 1a and 1b in accordance with the following

parts of *The Code: Professional standards of practice and behaviour for nurses and midwives* (the Code):

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

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

The panel took into account that Ms 4 and Ms 2 also gave evidence that they would have expected Mrs Qadeer to declare that information. It considered the case of *Ivey v Genting Casinos* [2017] UKSC 67. The panel noted that Mrs Qadeer had disclosed her full previous employment and caution order to two other employers. It was of the view that she is an experienced nurse who would have been aware of her duty to declare.

The panel was satisfied that Mrs Qadeer was aware that she should have declared her employment at Primrose Surgery and her caution order when applying to the Hospital. The panel did not accept that it was a 'mistake' as stated by Mrs Qadeer. The panel was of the view that there was no other logical explanation to not disclose other than to conceal her previous fitness to practise history.

The panel was satisfied that Mrs Qadeer's conduct would be considered dishonest by the standards of ordinary decent people.

The panel was therefore satisfied that Mrs Qadeer's conduct in charges 1a and 1b was dishonest and found this charge proved.

Submission on misconduct and impairment:

Having announced its finding on all the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Qadeer's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In his submissions Mr Kennedy invited the panel to take the view that Mrs Qadeer's actions amount to a breach of the Code. He then directed the panel to specific paragraphs and identified where, in the NMC's view, her actions amounted to misconduct. Mr Kennedy referred the panel to the case of *Roylance v GMC (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 Kennedy reminded the panel of its findings on facts. He submitted that Mrs Qadeer's dishonesty put her prospective employers at a disadvantage as they were not made aware of her caution order. Mr Kennedy submitted that Mrs Qadeer's actions amounted to misconduct.

He then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Mr Kennedy referred the panel to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) and *Cohen v General Medical Council* 2008 EWHC 581 (Admin).

Mr Kennedy invited the panel to consider whether Mrs Qadeer's misconduct is remediable. He submitted that, given Mrs Qadeer had a previous substantive hearing in which a finding of dishonesty was found against her and that she has repeated

dishonest behaviour as found by this panel, it may be difficult to remediate. Mr Kennedy added that there may be an attitudinal problem. He submitted that there is no information about Mrs Qadeer's current employment and she has not provided any references or testimonials.

Mr Kennedy submitted that Mrs Qadeer has not demonstrated any insight into how her dishonesty impacted on patients, her colleagues and the wider nursing profession nor has she demonstrated any remorse.

The panel has accepted the advice of the legal assessor.

The panel adopted a two-stage process in its consideration, as advised. First, the panel must determine whether the facts found proved amount to misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Qadeer's fitness to practise is currently impaired as a result of that misconduct.

Decision on misconduct

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

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

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

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

...

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Mrs Qadeer's actions in not being honest to her prospective employer were serious as this restricted the information available to her employers when carrying out a risk assessment of her suitability for the job. She was aware she had a duty to declare her caution order and had several opportunities to do so but chose not to.

The panel found that Mrs Qadeer's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

The panel next went on to decide if as a result of this misconduct Mrs Qadeer's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional 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 judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my

view the test would be equally applicable to other practitioners governed by different regulatory schemes.

Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

The panel finds that limbs a, b, c and d are engaged. The panel was of the view that Mrs Qadeer was dishonest with a potential new employer. She obtained a role in a new, potentially stressful environment without declaring her existing caution. In doing so, she denied her prospective employers the opportunity to make a proper and full risk assessment of her suitability for the post. The panel reminded itself of its earlier finding that both Ms 4 and Ms 2 confirmed that, had the caution order been declared, it would have been part of their considerations when offering the role. The panel also noted that Ms 4 told the panel that had she been aware of the caution, she would have explored the issue further and might not have offered Mrs Qadeer the job. The panel therefore concluded that through this dishonesty she may have put patients at unwarranted risk of harm.

The panel was also satisfied that Mrs Qadeer's dishonesty brought the professions into disrepute and breached a fundamental tenet of the professions.

The panel took into account that there was a finding of dishonesty against Mrs Qadeer at her previous substantive hearing. Along with its finding at this hearing, the panel was of the view that she has demonstrated a pattern of dishonesty which is difficult to remediate. Further, the panel was of the view that there is no evidence that Mrs Qadeer has remediated her dishonesty. She had not provided any references or testimonials from any work she has undertaken. Given Mrs Qadeer's pattern of dishonesty, the panel considered that this may indicate an attitudinal problem, giving rise to a significant risk of repetition.

Regarding insight, Mrs Qadeer demonstrated a limited level of insight at her previous hearing and in particular 'had failed to show a sufficient degree of insight into her dishonesty'. The panel noted Mrs Qadeer's explanation for her actions in the charges of this hearing, but, for the reasons set out in the determination on facts, the panel did not accept this. The panel took into account that Mrs Qadeer has demonstrated no insight this time. She has not provided a reflective piece and has not shown any acknowledgement into the full nature and extent of her actions and the impact her actions could have had on patients, colleagues and the wider nursing profession.

The panel is of the view that there is a risk of repetition based on Mrs Qadeer's lack of remorse, remediation and insight, and previous dishonesty. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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. The panel

determined that, in this case, a finding of impairment on public interest grounds was required as a finding of no impairment in this case would undermine the public's confidence in the profession.

Having regard to all of the above, the panel was satisfied that Mrs Qadeer's fitness to practise is currently impaired.

Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Mrs Qadeer off the register. The effect of this order is that the NMC register will show that Mrs Qadeer has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel bore 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") published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Mr Kennedy, on behalf of the NMC, outlined the sanction bid for a striking-off order. He outlined the mitigating and aggravating factors for the panel to consider. He told the panel that there has been no response from Mrs Qadeer regarding the NMC's sanction bid. He submitted that Mrs Qadeer's behaviour together with the previous finding of dishonesty amounts to serial dishonesty. He submitted that Mrs Qadeer has demonstrated limited insight in her previous case. He submitted that Mrs Qadeer's behaviour was not at the bottom end of the spectrum. He submitted that Mrs Qadeer's actions were deliberate and she withheld important information designed to achieve an

advantage for her. He submitted that these reasons were incompatible with Mrs Qadeer remaining on the register.

The panel first considered what it deemed to be the aggravating and mitigating factors in this case and determined the following:

Mitigating factors

- There was no actual patient harm
- There were no clinical failings in this case

Aggravating factors

- Mrs Qadeer has demonstrated a lack of insight into her failings
- Mrs Qadeer has not demonstrated remediation
- Mrs Qadeer has not demonstrated remorse
- Mrs Qadeer's previous regulatory finding of dishonesty
- Mrs Qadeer's actions were premeditated and systematic over a period of time to gain personal advantage in her job application
- Mrs Qadeer's dishonest act was perpetrated within a relatively short time of a caution being imposed for dishonesty and clinical concerns
- There was a potential risk of patient harm from her concealing her caution and prior regulatory concerns

The panel was of the view that the dishonesty in this case was at the higher end of the spectrum of seriousness. In this regard, the panel noted that Mrs Qadeer's dishonest act took place over a sustained period and comprised of the inaccurate completion of an application form and her failure to disclose her caution at an interview. The panel

considers that Mrs Qadeer's actions were premeditated and notes that there had been a prior regulatory finding of dishonesty.

The panel considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of this case, the dishonesty and the risk of repetition identified. The panel determined that taking no action would not protect the public and it would not satisfy the public interest.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where:

'The case is at the lower end of the spectrum of impaired fitness to practise, however the Fitness to Practise Committee wishes to mark that the behaviour was unacceptable and must not happen again.'

The panel considered that Mrs Qadeer's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case, the risk of repetition identified and given the fact that Mrs Qadeer had not provided the panel with any information to demonstrate remorse and insight, to satisfy the panel that this behaviour would not be repeated. The panel also noted that Mrs Qadeer had carried out a further act of dishonesty despite the caution order imposed in 2016. The panel determined that imposing a caution order would not protect the public and it would not satisfy the public interest.

The panel next considered whether to impose a conditions of practice order. The panel noted that the concerns identified were not clinical. The panel did not consider that this was a case where it was possible to formulate practicable and workable conditions, given the attitudinal concerns in respect of Mrs Qadeer and her repeated dishonesty. The panel determined that conditions of practice could not be formulated which would protect the public and satisfy the public interest.

The panel then went on to consider whether to impose a suspension order. The panel had regard to the SG, and the factors to consider when deciding whether this would be an appropriate sanction. The panel was of the view that Mrs Qadeer's failings did not involve a single instance of misconduct and there was evidence of attitudinal problems on her part. Furthermore, the panel was not satisfied that Mrs Qadeer had insight, and therefore the panel considered that she did pose a significant risk of repeating her behaviour. Having regard to the fact that no material had been provided to demonstrate any reflection, remorse and insight, the panel did not consider that a period of suspension would be appropriate. Whilst a period of suspension may be sufficient to protect the public, the panel did not consider that it would be sufficient to maintain public confidence in the nursing profession and in the NMC as a regulator and to uphold proper professional standards of conduct and performance.

The panel determined that a suspension order would not be appropriate or proportionate in the circumstances of this case.

The panel then considered whether to impose a striking-off order.

The panel did not have any evidence of insight, remorse or reflection in relation to Mrs Qadeer's sustained dishonesty, a realisation of how her actions were unacceptable and an understanding by Mrs Qadeer of the implications of her actions, such that it could be satisfied that the behaviour would not be repeated. The panel considered that Mrs Qadeer's actions represented a significant departure from the standards expected of a registered nurse and were fundamentally incompatible with her remaining on the register. The panel was of the view that Mrs Qadeer's actions were so serious that to allow her to continue practising would undermine public confidence in the nursing profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the only appropriate and proportionate

sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Mrs Qadeer's actions in bringing the nursing profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this sanction 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.

Determination on Interim Order

The panel has considered the submissions made by Mr Kennedy that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

The panel accepted the advice of the legal assessor.

The panel was satisfied that an interim suspension 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. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.