

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

**Substantive Hearing
Monday 8 August 2022 – Friday 12 August 2022**

Virtual Hearing

Name of registrant:	Miss Julie Moore
NMC PIN:	05H0473E
Part(s) of the register:	Registered Midwife – Midwifery RM: Midwife - 1 October 2005
Relevant Location:	Birmingham
Type of case:	Misconduct
Panel members:	Dale Simon (Chair, Lay member) Dr Katharine Martyn (Registrant member) Catherine Askey (Registrant member)
Legal Assessor:	Sanjay Lal
Hearings Coordinator:	Daisy Sims
Nursing and Midwifery Council:	Represented by Dominic Bardill, Case Presenter
Miss Moore:	Not present and unrepresented
Facts proved:	Charges 1, 2, 3
Fitness to practise:	Impaired
Sanction:	Strike-off Order
Interim order:	Interim suspension order

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Moore was not in attendance and that the Notice of Hearing letter had been sent to Miss Moore's registered email address and Miss Moore's home address on 30 June 2022.

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

Mr Bardill informed the panel that there has been email communication and telephone communication between the NMC and Miss Moore today, to which Miss Moore has replied to some email communications but has made no indication that she will be attending the hearing today. He submitted that this further shows that Miss Moore is aware of the hearing today.

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Miss Moore

The panel next considered whether it should proceed in the absence of Miss Moore. It had regard to Rule 21 and heard the submissions of Mr Bardill who invited the panel to continue in the absence of Miss Moore. Mr Bardill submitted that Miss Moore has voluntarily absented herself.

Mr Bardill submitted that Miss Moore has chosen not to attend. He informed the panel that there has been communication between the NMC and Miss Moore this morning which has not led to her attendance at the hearing at this time.

Mr Bardill submitted that the panel must consider the public interest in this case, he informed the panel that this case has previously been put on hold due to the COVID-19 pandemic which he submitted furthers the need for an expeditious disposal of this case. He submitted that there are witnesses warned to attend this hearing today and tomorrow and these witnesses will be inconvenienced if the hearing is postponed.

Mr Bardill concluded that given the fact that there has been ongoing communication with Miss Moore and the NMC up to today, it would not be unfair or prejudicial to not proceed in her absence. Therefore, Mr Bardill submitted that it would be appropriate and proportionate to proceed in the absence of Miss Moore.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Miss Moore. In reaching this decision, the panel has considered the submissions of Mr Bardill, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)*_(No.2) [2002] UKHL 5) and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and 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 Miss Moore;
- Miss Moore has informed the NMC that she has received the Notice of Hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses are due to attend today to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) 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 accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Moore in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address and home address, she has made no response to the allegations. She 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 judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence that it identifies. Furthermore, the limited disadvantage is the consequence of Miss Moore's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

The panel noted that Miss Moore is able to attend at any point during the hearing if she so wishes.

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

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

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

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

Having heard that proper exploration of Miss Moore's case is partly linked with [PRIVATE], the panel determined to hold parts of the hearing in private.

Details of charge (as amended)

'That you, a registered midwife:

- 1) *Were working under the influence of alcohol during a night shift commencing on 23 September 2019. **[PROVED]***
- 2) *On or around 23 September 2019 provided a sample of liquid otherwise than pure urine, for testing. **[PROVED]***
- 3) *Between 8 January 2020 and 16 March 2022, failed to cooperate with an investigation [PRIVATE]. **[PROVED]***

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

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Bardill, on behalf of the NMC, to amend the wording of charges.

The proposed amendment was to amend the word 'nurse' to 'midwife'. It was submitted by Mr Bardill that the proposed amendment would provide clarity and rectify the inaccuracy.

Original Wording:

'That you, a registered nurse:

Amended Wording:

*'That you, a registered ~~nurse~~ **midwife**:*

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

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

Background

The charges arose whilst Miss Moore was employed as a registered midwife at the City Hospital (the Hospital) in Birmingham.

On 23 September 2019 concerns were raised by Miss Moore's colleagues regarding her demeanour. She was described as drowsy and slurring her words. Staff believed she was under the influence of alcohol. Miss Moore was then asked to provide a urine sample for testing; however, when dip tested, this sample didn't respond to the reagent, allegedly indicating it only contained water and no urine. A blood sample was taken with Miss Moore's consent and Miss Moore was then accompanied to A&E where she had a medical examination. Miss Moore did not disclose the results of these tests, but the doctor who saw Miss Moore in A&E advised staff that she should not be allowed to complete her shift or to drive home. Miss Moore returned to the maternity unit and during a conversation with Ms 2, she admitted that she had a glass of wine at lunch time before starting her shift. Miss Moore was then sent home.

The matter was reported to the NMC who then conducted an investigation. It is alleged that between 8 January 2020 and 16 March 2020 Miss Moore did not cooperate with the NMC to conduct an investigation [PRIVATE].

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence including documentation submitted in this case including documentation provided by Miss Moore together with the submissions made by Mr Bardill on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Miss Moore.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact

will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- (Ms 1): Midwife, NHS
- (Ms 2): Former Divisional Quality Governance Lead, Worcestershire Acute Hospitals NHS Trust
- (Ms 3): Employment Relations Advisor / Casework Manager, Sandwell and Birmingham Hospitals NHS Trust

The following witnesses were not called, and their statements were read:

- (Mr 4): NMC employee

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 provided by the NMC.

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

Charge 1

‘That you a registered midwife:

- 1) *Were working under the influence of alcohol during a night shift commencing on 23 September 2019.’*

This charge is found proved.

In reaching this decision, the panel took into account the live evidence of Ms 1, Ms 2 and Ms 3.

The panel considered that Ms 1 and Ms 2 both gave accounts of seeing Miss Moore's behaviour being erratic, sleepy and unsteady and appeared to be under the influence of alcohol.

The panel noted that in Ms 3's witness statement to the NMC dated 13 July 2021, Ms 3 stated that:

'As part of the investigation I interviewed Ms Moore, during which she confirmed that she had a large glass of white wine at approximately 3:30pm on Monday 23rd September 2019.'

The panel also noted that Ms 2 corroborated this in her witness statement to the NMC, dated 9 July 2021, as she stated that Miss Moore *'confessed that she consumed a glass of wine at lunch time'*.

The panel determined that whilst Miss Moore has not provided a formal admission to the charge, she did state that she had consumed a glass of wine at lunch time on 23 September 2019.

The panel also noted the live evidence of Ms 2 who stated that there was a strong smell of alcohol coming from Miss Moore. Ms 2 explained, through questioning, that the smell of alcohol coming from Miss Moore was different than that which was usual in a clinical setting. She informed the panel that there is usually a smell of alcohol in a clinical setting due to the use of alcohol sanitizers, she further stated that the smell from Miss Moore was *'above and beyond'* the usual aroma in a clinical setting.

The panel took into consideration the witness statement of Ms 2 who had contact with the Accident and Emergency (A&E) doctor who assessed Miss Moore on the night in

question. Ms 2 stated that this doctor informed her that Miss Moore was not fit to return to her shift and was not fit to drive herself home. The panel noted that it did not have sight of the medical reports from this A&E visit as Miss Moore did not consent for these results to be shared. The panel determined that this information together with the evidence of Miss Moore's erratic state makes a compelling case that Miss Moore was under the influence of alcohol on the night in question.

Accordingly, the panel was of the view that, on the balance of probabilities, it is more likely than not that Miss Moore was working whilst under the influence of alcohol during a night shift commencing on 23 September 2019.

Charge 2

'That you a registered midwife:

2) On or around 23 September 2019 provided a sample of liquid otherwise than pure urine, for testing.'

This charge is found proved.

In reaching this decision, the panel took into account the witness statement and live evidence of Ms 2 and the witness statement of Ms 3.

The panel took into consideration that it was Ms 2 who conducted the urine test of Miss Moore. It noted that Ms 2 stated that as soon as she saw the urine sample provided by Miss Moore it was clear that it was water. Ms 2 stated that she conducted the dipstick test of the urine sample and there was no reaction or change to the pH level. Through questioning from the panel Ms 2 explained that even if a urine sample is watered down significantly there would be some form of reaction to the pH level on the dipstick urine test. Ms 2 also informed the panel that she smelled the sample, which she informed the panel was a standard practice in urine assessment, and there was no scent coming from the sample which made her believe the sample was water. Ms 2 also informed the

panel she asked Miss Moore at the time of the urine sample collection whether the sample was water and Miss Moore stated that it was urine.

The panel also took into consideration the minutes of an investigatory meeting between Ms 3 and Miss Moore on 25 November 2019 where Miss Moore was asked by Ms 3 whether the urine sample she had provided was urine to which Miss Moore replied that she '*scooped the sample out of toilet as only a little came out*'. The panel determined this was an admission by Miss Moore that the sample she had provided was not pure urine.

The panel also determined that as a registered midwife and medical professional Miss Moore would have known that a sample including water would not have been an acceptable sample.

Therefore, the panel determined that, on the balance of probabilities, it is more likely than not that on or around 23 September 2019 Miss Moore provided a sample of liquid otherwise than pure urine, for testing.

Charge 3

'That you a registered midwife:

- 3) *Between 8 January 2020 and 16 March 2022, failed to cooperate with an investigation [PRIVATE].'*

This charge is found proved.

In reaching this decision, the panel took into account the written evidence of Mr 4. The panel noted the exhibits provided which show the communication between Miss Moore and the NMC.

The panel noted that the communications from the NMC were sent to an email address that Miss Moore did have access to due to her replies to some of the emails from the NMC. The panel also noted that Miss Moore has replied to the NMC as recently as 9

August 2022. It therefore concluded that Ms Moore was in communication with the NMC.

[PRIVATE]

The panel determined that Miss Moore had been given sufficient time and opportunity to provide the NMC [PRIVATE] and that multiple chaser emails had been sent to Miss Moore with no response from her. The panel also noted that it is a registrants' duty to comply with any investigation by their regulator.

Therefore, the panel has determined that between 8 January 2020 and 16 March 2022, Miss Moore failed to cooperate with an investigation [PRIVATE].

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 Miss Moore's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, 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, Miss Moore's 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 Bardill 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 Bardill drew the panel's attention to the NMC impairment bundle, specifically to the relevant factors section. He informed the panel that the first factor namely: '*on the shift in question, Miss Moore took a phone call and offered the wrong information to a patient who had called in for advice ...*', does not form part of the charges against Miss Moore.

Mr Bardill identified the specific, relevant standards where Miss Moore's actions amounted to misconduct. Mr Bardill referred the panel to the case of *R (remedy UK Ltd) v General Medical Council* [2010] EWHC 1245. He stated that in this case it was held that the conduct must be '*sufficiently serious that it can properly be described as misconduct going to fitness to practise*'.

Mr Bardill submitted that in relation to charges 1 and 2, being drunk or intoxicated whilst on shift in a patient facing role and attempting to deceive the urine test, does amount to sufficient serious misconduct. Mr Bardill stated that there has been no finding of dishonesty against Miss Moore and stated that attempting to deceive the urine test does not relate to dishonesty but instead relates to Miss Moore's lack of candour and integrity.

Mr Bardill submitted that whilst charge 3 alone may not amount to sufficient serious misconduct, when this is taken in the context of charges 1 and 2 it aggravates the seriousness of charge 3. Mr Bardill submitted that not cooperating with the investigation demonstrates a lack of insight and candour. He submitted that by Miss Moore not

cooperating it is impossible to address the regulatory concern and behaviour that has led to the charges.

Mr Bardill submitted that the serious lack of candour within charges 2 and 3 is another factor in why Miss Moore's actions amount to sufficient serious misconduct. He submitted that this lack of candour could have placed fellow members of staff in a difficult position as they would have had to assist Miss Moore. Mr Bardill submitted that this could have led to serious clinical failures by other members of staff.

Mr Bardill submitted that whilst there was no actual patient harm caused by Miss Moore's actions, there was a potential for serious harm to patients and subsequently the public. Mr Bardill submitted that Miss Moore's actions do, therefore, amount to sufficiently serious misconduct for the purposes of these proceedings.

Submissions on impairment

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

Mr Bardill submitted that there is a risk to patient and public safety by virtue of the fact that Miss Moore was drunk or intoxicated on shift, and then proceeded to attempt to avoid accountability. He submitted that the lack of candour goes to the question of risk to patient and public safety. Mr Bardill submitted that there is no information before the panel from Miss Moore to suggest that the concerns have been addressed.

Mr Bardill submitted that in Miss Moore failing in her duty to cooperate with the NMC's investigation [PRIVATE], she had prevented the extent of the risk from being identified.

He submitted that this not only goes to the risk posed by Miss Moore but the lack of insight she has presented.

Mr Bardill submitted that Miss Moore's actions of being drunk on a shift in a patient-facing role resulted in patients being placed at a risk of serious harm, notwithstanding that there was no actual harm that took place. He additionally submitted that the actions of Miss Moore impacted her colleagues which placed them at a risk of harm too. He submitted that the risk to colleagues was the risk of making clinical errors and having to deal with the errors of an intoxicated staff member. He further submitted that the lack of candour by Miss Moore undermined the entire fabric of the working environment.

Mr Bardill submitted that Miss Moore did not participate in the hearing and has engaged only minimally. Miss Moore submitted a document where she alleged corruption and professional jealousy on the part of her colleagues. Mr Bardill stated that these issues have not been raised at any point after her dismissal as far as the NMC is aware. Mr Bardill submitted that the allegations made by Miss Moore demonstrate what limited insight she has.

Mr Bardill informed the panel that Miss Moore has made partial admissions to her actions, although he submitted that those admissions were made when she was left with little other options. He submitted that the admissions were minimal, and this demonstrates that she shows little to no insight therefore making it unlikely that her actions would be remedied.

Mr Bardill submitted that the NMC say that a lack of candour is extremely difficult to remedy [PRIVATE].

Mr Bardill submitted that the NMC say the risk remains and is ongoing. He submitted that impairment can be found in order to maintain public trust and confidence in the profession.

Mr Bardill referred the panel to the NMC Code of conduct and submitted that Miss Moore is in breach of the following duties:

- **Core Duty 14 - Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place**
- **14.1** act immediately to put right the situation if someone has suffered actual harm for any reason or an incident has happened which had the potential for harm.
- **Core Duty 19 - Be aware of, and reduce as far as possible, any potential for harm associated with your practice**
- **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.
- **19.4** take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public
- **Core Duty 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.
- **Core Duty 23 - Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to**

act as a witness in any hearing that forms part of an investigation, even after you have left the register.

- **23.1** cooperate with any audits of training records, registration records or other relevant audits that we may want to carry out to make sure you are still fit to practise.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

The panel was of the view that Miss Moore's actions were deplorable and did fall significantly short of the standards expected of a registered midwife, and that Miss Moore's actions amounted to a breach of the Code. Specifically:

- 13.4 take account of your own personal safety as well as the safety of people in your care
- 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
- 19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public
- **Core Duty 20 - Uphold the reputation of your profession at all times**

- **Core Duty 23 – Cooperate with all investigations and audits**

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 the conduct of Miss Moore is a departure of what is expected from a registered midwife.

The panel determined that Miss Moore's general lack of candour and engagement is concerning. It noted the submissions provided by Miss Moore on 9 August 2022 and determined that the submissions show a lack of insight by shifting blame on to other people. The panel also noted that the regulatory concerns were not directly addressed in the written submissions of Miss Moore. The panel was of the view there is still no evidence of insight into the concerns raised on 23 September 2019. Therefore, the panel determined that these actions fell far below the standards expected of a registered midwife.

The panel was of the view that no one would expect a registered professional of any kind to arrive at a shift under the influence of alcohol or substances. The panel noted that even if Miss Moore did not have contact with any patients, it is not within the remit of a professional to attend work in an intoxicated state.

Therefore, the panel found that Miss Moore's actions did fall seriously short of the conduct and standards expected of a midwife and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Miss Moore's fitness to practise is currently impaired.

Midwives occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust midwives with their lives and the lives of their loved ones. To justify that trust, midwives must be honest and open and act with integrity. They must make

sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

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

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

The panel finds that patients were put at risk and there was a potential of physical and emotional harm as a result of Miss Moore's misconduct. The panel finds this because by Miss Moore attending work under the influence and taking on the triage role there was a potential for poor or incorrect advice or treatment to be given to a patient. The panel finds that Miss Moore's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that Miss Moore has not shown any remorse into her actions. The panel considered that Miss Moore attempting to deflect responsibility in her written statement to the panel is concerning and shows a significant lack of insight into her actions.

[PRIVATE].

The panel noted that Miss Moore did attempt to explain her actions in charge 2 relating to not providing a pure urine sample for testing. However, the panel considered that Miss Moore, as a registered midwife, would know the importance of obtaining a valid urine sample. The panel determined that Miss Moore would have been aware that scooping a urine sample from the toilet bowl would not provide a valid sample to be tested.

The panel noted the length of time that Miss Moore has had to engage with the proceedings and reflect on her actions. It determined that she has a continued lack of engagement, and where there has been engagement by Miss Moore, she has continued to put the blame on others whilst not accepting that any of her actions on the shift in question were wrong.

The panel is of the view that there is a risk of repetition based on the lack of insight provided by Miss Moore or acknowledgement of her wrongdoing. [PRIVATE].

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; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required because the public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Moore's fitness to practise impaired on the grounds of public interest.

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

Decision and reasons on application for voluntary removal

After the panel handed down its decision on current impairment, the panel was informed that Miss Moore had a request for voluntary removal from the register which was received on 10 August 2022.

The panel considered the application and made a recommendation to the Registrar.

The panel was of the view that this case was not suitable for voluntary removal.

The panel noted that Miss Moore offered an admission and an acceptance of impairment in her voluntary removal form by ticking the appropriate boxes in response to the questions asked. However, the panel also noted that Miss Moore has contradicted this admission in an email to the NMC on 9 August 2022. In this email communication Miss Moore blamed others for her actions and gave no indication that she accepted the allegations.

The panel noted that there is no evidence included in Miss Moore's voluntary removal application form to support her admission or her reason for seeking voluntary removal from the register.

The panel noted that Miss Moore did not tick the box titled '*no longer wish to practise in the UK or elsewhere*' but instead ticked the box titled '*other*' and wrote '*I am no longer practising*'. It determined that this information does not guarantee that Miss Moore will not attempt to return to practise if the voluntary removal from the register was granted.

The panel therefore determined that Miss Moore's voluntary removal application form, did not amount to a full genuine admission or provide clarity as to her future working plans.

In light of the panel finding that the facts found proved amount to misconduct and the finding that Miss Moore's fitness to practise is currently impaired, the panel determined that granting voluntary removal would not take into account the overall seriousness of the misconduct found.

The panel was of the view that in serious cases like this a voluntary removal from the register would not address the public interest in this case and would not uphold the standards expected from registered nurses and midwives.

Therefore, the panel recommended that the Registrar dismisses Miss Moore's application for voluntary removal.

The panel put their recommendation to the Registrar who considered the application and refused it. Separate reasons have been produced by the Registrar.

Submissions on sanction

Mr Bardill informed the panel that in the Notice of Hearing, dated 30 June 2022, the NMC had advised Miss Moore that it would seek the imposition of a striking-off order if it found Miss Moore's fitness to practise currently impaired.

Mr Bardill informed the panel that it was previously submitted during the sanction stage that there is a current and ongoing risk to patient and public safety if Miss Moore were allowed to practice unrestricted by reason of her misconduct. Mr Bardill stated that the panel have now found misconduct and impairment on both public interest and public protection grounds. He stated that the panel has found all charges proved.

Mr Bardill stated that Miss Moore has provided minimal written documents outlining her response or position and at no point has she accepted that her actions lacked integrity or candour.

Mr Bardill submitted that the fact that Miss Moore attempted to cover up and avoid accountability for her intoxication is an aggravating feature in this case. He submitted that the lack of candour in this case is heavily interlinked with attitude and insight. He submitted that this makes the overall regulatory concern extremely difficult to put right.

He also submitted that the fact that Miss Moore was dealing directly with patients whilst intoxicated is another aggravating feature in this case. Mr Bardill submitted that by virtue of being in triage and therefore the first person for patients to be in contact with, the fact that Miss Moore was intoxicated to the degree that she was is a further aggravator. He further submitted that the lack of candour and the intoxication could have led to clinical errors and could have put other members of staff at risk. He submitted that this poses a real risk, to public safety, of serious harm.

Mr Bardill submitted that Miss Moore's lack of insight is an aggravating feature. He stated that Miss Moore does not display any particular insight into the charges found proved. He stated that whilst Miss Moore has made some admissions, these were minimal and always at the last moment. Mr Bardill submitted that there is limited

evidence to support the admissions made by Miss Moore and there has been no acceptance by her without also casting aspersions on the motivations and intentions of colleagues and staff who gave evidence. Mr Bardill summarised by submitting that whilst there have been admissions by Miss Moore, those admissions are not sufficient to suggest remediation or insight.

Mr Bardill submitted that there are some mitigating features in Miss Moore's case. He submitted that there have been no previous sanctions of NMC findings against Miss Moore. He further submitted that Miss Moore provided some admissions during the local investigation. [PRIVATE].

Mr Bardill went on to address the panel on the available sanctions. He submitted that a caution order would not be sufficient to reflect the seriousness of the case or protect patients and the public. He further submitted that a conditions of practice order would not be appropriate to address the lack of insight, candour or remediation. He submitted that a conditions of practice order would not assist [PRIVATE].

Mr Bardill submitted that a suspension order is not the appropriate sanction because it would not address insight, candour or remediation. He submitted that a suspension order is finite and does not address the regulatory concerns which would lead to the risk of repetition. Therefore, he submitted that, for similar reasons as to why a condition of practice order is not appropriate, a suspension order is not appropriate either.

Mr Bardill submitted that in the light of this matter relating to candour and substance use whilst caring for patients, coupled with a lack of insight, the only appropriate sanction to achieve the overarching objective of patient safety and public protection is a strike off order. He submitted that a strike off order would preserve public confidence in the profession and the NMC as regulator and provide a deterrence for others. He submitted that, in light of the panel's findings, Miss Moore's conduct is incompatible with continued registration.

The panel heard advice from the legal assessor.

Decision and reasons on sanction

Having found Miss Moore's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Moore attempted to cover up and avoid accountability for her intoxication;
- Miss Moore placed herself in a position of dealing directly with patients through triage whilst intoxicated;
- Miss Moore's lack of insight;
- Miss Moore's lack of remorse;
- Miss Moore's continued attempt to blame others for her actions.

The panel also took into account the following mitigating features:

- [PRIVATE]

[PRIVATE].

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, and the public protection issues identified, an order that does not restrict Miss Moore's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that*

the behaviour was unacceptable and must not happen again.' The panel considered that Miss Moore'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 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 Miss Moore's 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 was not something that can be addressed through retraining as the issues identified do not relate directly to her practise. Furthermore, the panel concluded that the placing of conditions on Miss Moore's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel determined that none of the factors outlined above apply to this case. It was of the view that there is evidence of harmful deep-seated attitudinal problems and there has been no insight shown by Miss Moore into her actions as such there is a risk of repetition. Therefore, the panel determined that a suspension order would not be appropriate.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered midwife. The panel noted that Miss Moore has shown no remorse for her actions, and she has shown a lack of candour and insight. The panel determined that this shows serious deep seated attitudinal problems.

The panel also noted that Miss Moore has been subject to an interim suspension order for a long period of time, providing ample opportunity for Miss Moore to reflect on and demonstrate insight, remorse and a change in attitude. However, recent email correspondence from Miss Moore to the NMC has shown no such changes.

Furthermore, the panel took into account the submission from Mr Bardill that a suspension order is finite as it can only be imposed for a year. The panel endorsed Mr Bardill's submission that a suspension order would not be appropriate given the issues identified and the facts found proved.

The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Miss Moore's actions is fundamentally incompatible with Miss Moore remaining on the register.

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?*

Miss Moore's actions were a significant departure from the standards expected of a registered midwife and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Moore's actions were serious and to allow her to continue practising would undermine public confidence in the 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 appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Moore's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered midwife should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Miss Moore in writing.

Submissions on interim order

The panel took account of the submissions made by Mr Bardill. He submitted that an interim suspension order for 18 months is appropriate to take into account any appeals that may occur.

The panel accepted advice from the legal assessor.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Moore's own interest until the striking-off sanction takes effect.

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.

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

That concludes this determination.