Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
8-16 August 2022

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

Name of registrant:	**Minka Zhivkova Stoeva**
NMC PIN:	09B0012C
Part(s) of the register:	RN1- Registered Nurse Adult- 4 February 2009
Relevant location:	Kent and Surrey
Type of case:	Misconduct
Panel members:	John Penhale (Chair, lay member) Jonathan Coombes (Registrant member) Caroline Friendship (Lay member)
Legal Assessor:	Simon Walsh
Hearings Coordinator:	Holly Girven
Nursing and Midwifery Council:	Represented by Shekyena Marcelle-Brown, Case Presenter
Mrs Stoeva:	Present and represented by Chloe Hucker, instructed by the Royal College of Nursing (RCN)
Facts proved by admission:	Charges 2, 3 and 4
No case to answer:	Charges 1.1 and 1.2
Facts proved:	Charge 5
Facts not proved:	Charge 6
Fitness to practise:	Impaired
Sanction:	**Striking-off order**

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Marcelle-Brown, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charges 1.1, 1.2 and 5.

The proposed amendment was to reflect the evidence more accurately in relation to charges 1.1. and 1.2. In relation to charge 5, the application was to more accurately identify which actions were alleged to be dishonest. It was submitted by Ms Marcelle-Brown that the proposed amendment would provide clarity and more accurately reflect the evidence.

The proposed amendments were as follows:

1. On the 19 August 2016 in respect of Patient A
   1.1 Administered 8 ~~tablets~~ **mgs** of Bumetanide in the morning when the correct amount was 4.
   1.2 Administered 6 ~~tablets~~ **mgs** of Bumetanide after lunch time when the correct amount was 3.

5. Your actions at charge ~~1~~ **4** was dishonest in that you sought to conceal that you had been dismissed by one or more of the following employers;

Ms Hucker, on your behalf, did not make any objection to the proposed amendments.

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 amendments, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. It was

therefore appropriate to allow the amendments, as applied for, to ensure accuracy and clarity.

In addition, the panel of its own volition amended charge 2 as follows to correct a spelling error. Neither Ms Marcelle-Brown nor Ms Hucker objected to the following amendment:

2. On Thursday 23 February 2017 did not follow the instructions on Resident B's MAR chart in that you administered Azithromycin~~on~~ on the wrong day.

Decision and reasons on admitted charges

At the outset of the hearing, the panel heard from Ms Hucker who informed the panel that you made admissions to charges 1.1, 2, 3 and 4.

Following the evidence of Witness 1, Ms Hucker made an application to withdraw from the admission to charge 1.1. She submitted that the admission was made on the basis that eight mgs had been administered, but not on the basis that four mgs was the correct dose.

Ms Marcelle-Brown did not object to the application to withdraw from the admission to charge 1.1.

The panel accepted the advice of the legal assessor.

The panel determined that it would be fair to you to allow you to withdraw your admission to charge 1.1 as you had not changed your admission to anything you actually did just your acceptance, perhaps due to a misunderstanding, of whether what you did was not in fact correct. The panel will go on to determine whether charge 1.1 is found proved.

The panel finds charges 2, 3 and 4 proved by way of your admissions.

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

After providing Witness 6's medical report to the panel, Ms Hucker made a request that parts of this case be held in private on the basis that proper exploration of your case involves reference to your health. The application was made pursuant to Rule 19 of the Rules.

Ms Marcelle-Brown did not object to the application.

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

The panel determined to go into private session as and when the matters relating to your health addressed by Witness 6 are raised in order to protect the confidentiality of such matters.

Decision and reasons on application to amend the charge

Following the evidence of Witness 3, the panel heard an application made by Ms Marcelle-Brown to amend the wording of charge 6.

The proposed amendment was to remove reference to the time at which the medication was allegedly administered and to correct the spelling of Losartan. It was submitted by Ms Marcelle-Brown that the proposed amendment would provide clarity and more accurately reflect the evidence. She submitted that no injustice would be caused to you if the amendment were made.

The proposed amendment was as follows:

6. On 23 December 2018 administered 50mg ~~Losarton~~ **Losartan** to Patient A ~~at 22:00 when it~~ **which** was not due.

Ms Hucker, on your behalf, did not make any objection to the proposed amendment.

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you 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 accuracy and clarity.

Details of charge, as finalised

That you a registered nurse

1. On the 19 August 2016 in respect of Patient A
   1.1 Administered 8 mgs of Bumetanide in the morning when the correct amount was 4. (**No case to answer**)
   1.2 Administered 6 mgs of Bumetanide after lunch time when the correct amount was 3. (**No case to answer**)

2. On Thursday 23 February 2017 did not follow the instructions on Resident B's MAR chart in that you administered Azithromycin on the wrong day. (**Found proved by admission**)

3. On the 29 May 2018 administered Hydroxocobalamin to Resident C when it was not due. (**Found proved by admission**)

4. Answered 'no' to the question 'have you ever been dismissed from a previous position' on your application form dated 1 August 2018 when applying for a job at the Tunbridge Wells Care Centre. (**Found proved by admission**)

5. Your actions at charge 4 was dishonest in that you sought to conceal that you had been dismissed by one or more of the following employers; (**Found proved**)

    a. West Bank Care Home
    b. Emily Jackson Nursing Home
    c. Russell Court Nursing Home
    d. Maidstone Care Centre
    e. Greathed Manor Nursing Home

6. On 23 December 2018 administered 50mg Losartan to Patient A which was not due. (**Found not proved**)

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

Decision and reasons on application of no case to answer

The panel considered an application from Ms Hucker that there is no case to answer in respect of charges 1.1 and 1.2. This application was made under Rule 24(7).

Ms Hucker submitted that in relation to both charges, there is no evidence of what the correct dose to give Patient A was. She referred to the evidence of Witness 1 and to the MAR chart for Patient A. She submitted that the handwritten note on the MAR chart means there is no evidence of what the correct dose is, and Witness 1 said she was not able to confirm what the correct dose was based on the documentation.

Further, in relation to charge 1.2, Ms Hucker submitted that there is no signature on the MAR chart for the lunchtime dose and as such there is no evidence that you gave any medication then. In these circumstances, it was submitted that charges 1.1 and 1.2 should not be allowed to remain before the panel.

Ms Marcelle-Brown submitted that the MAR chart has a typed instruction that states four mgs should be given in the morning and three at lunchtime. In relation to the handwritten note, she submitted that this does not state what has been increased or by how much. In relation to charge 1.2, Ms Marcelle-Brown stated that whilst she acknowledges the lack of a signature on the MAR chart, there is evidence that medication was administered based on a stock check of the medications. She further submitted that an alleged error being escalated suggests it did occur as there would have been no need to escalate it had it not happened. She submitted that there was sufficient evidence in relation to both charges.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor. This included reference to the cases of *R v Galbraith* (1981) 73 Cr App R 124 and *R v Shippey* [1988] Crim LR 767.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

The panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it could find the facts of charges 1.1 and 1.2 proved. The panel noted that Witness 1 stated that the handwritten note on the MAR chart does suggest that the medication dose had been increased, but she was not able to confirm what the correct dose was. The panel determined that the evidence provided is self-contradictory as the typed MAR chart states four mgs in the morning and three at lunch, but the handwritten note and Witness 1's evidence indicate that the dose had been changed by 19 August 2016. The panel therefore determined that the evidence of what the correct dose of Bumetanide is so weak and tenuous that it cannot be relied upon.

The panel further noted in relation to charge 1.2 that there is no signature on the MAR chart for the lunchtime dose, and the only evidence that medication was given at that time is hearsay evidence that someone conducted a stock check, and the remaining tablets did

not reflect the MAR chart. It has not been provided with evidence from the person who conducted the stock check, and it is not clear how many tablets were remaining. The panel determined that this evidence is so weak and tenuous that it cannot safely be relied upon.

The panel therefore determined that there is no case to answer in relation to charges 1.1 and 1.2.

Decision and reasons on application to cross-examine the registrant on a topic it had previously been agreed would not be referred to and in respect of which all witness and documentary evidence had been redacted

During your evidence-in-chief, you made an oblique reference to a '*caution order'*. Ms Marcelle-Brown made an application for permission to ask you what you were referring to when you referred to a caution.

Ms Marcelle-Brown invited the panel to determine whether under Rule 31, it was fair and relevant to allow this questioning. She submitted that you said something of significance, and she should be able to explore this further. She submitted that it is not certain how you will respond to the question, and she should be permitted to ask exploratory questions in relation to the '*caution order'* as you adduced the evidence in your answer to a question from Ms Hucker.

Ms Hucker stated that it has previously been agreed by the NMC that the reference to a '*caution order'* would not be adduced, and redactions have been made to witness statements as a result. She stated she has not questioned any of the NMC witnesses about this topic. She submitted that the topic is irrelevant to the decision the panel are being asked to make at this stage.

The panel accepted the advice of the legal assessor.

The panel first considered whether the topic is relevant. The panel acknowledged that the topic has the potential to be relevant, but without further information it could not determine the relevance of the topic.

The panel then considered whether it would be fair to allow Ms Marcelle-Brown to explore the topic. The panel determined that it would be unfair. The panel noted that it had been agreed that the topic would not be adduced, and that redactions have been made on that basis. The panel determined that your inadvertent mention of a '*caution order'* should not result in further questions being asked about this topic when it had been agreed by your representatives and the NMC that this would not be referred to at this stage. The panel directed that no questions relating to a '*caution order'* should be asked of you.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Marcelle-Brown on behalf of the NMC and by Ms Hucker on your behalf.

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

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

- Witness 1: Registered Home Manager at Russell Court Nursing Home at the time of the allegations set out in charges 1 and 2.

- Witness 2: Home Manager at Greathed Nursing Home from February 2018 and at the time of the allegation set out in charge 3.
- Witness 3: Operations Manager for Canford Healthcare, which Tunbridge Wells Care Centre is part of. Provided evidence in relation to charges 4, 5 and 6.
- Witness 4: Registered Manager of Tunbridge Wells Care Centre from February 2018, previously Home Manager of Greathed Nursing Home. Provided evidence in relation to charges 4 and 5.
- Witness 5: Staff Nurse at Tunbridge Wells Care Centre, provided evidence in relation to charge 6.

The panel also heard evidence from Witness 6, called on your behalf. Witness 6 is a [PRIVATE] who provided evidence relating to your health.

The panel was provided with a copy of agreed facts, which were:

'1. Minka Stoeva originally practised as a nurse in Bulgaria before coming to the UK in January 2008. Ms Stoeva registered with the NMC as a nurse in February 2009.

2. Ms Stoeva was employed as a registered nurse by West Bank Care Home between November 2015 and 26 January 2016 when she was dismissed.

3. Ms Stoeva was employed as a registered nurse by the Barchester Emily Jackson House Care Home between 16 March 2016 and 13 May 2016 when she was dismissed.

4. Ms Stoeva was employed as a registered nurse by Russell Court Nursing Home between July 2016 and 24 February 2017 when she was dismissed.

5. Whilst working at Russell Court Nursing Home on 23 February 2017, Ms Stoeva did not follow the instructions on Resident B's MAR chart and administered Azithromycin on the wrong day (charge 2).

6. Ms Stoeva was employed by Maidstone Care Centre between 12 June 2017 and 31 August 2017 when she was dismissed.

7. Ms Stoeva was employed as a registered nurse by Greathed Nursing Home between 8 January 2018 and 12 June 2018 when she was dismissed.

8. On 29 May 2018, whilst working at Greathed Nursing Home, Ms Stoeva administered Hydroxocobalamin to Resident C when it was not due (charge 3).

9. Ms Stoeva was employed as registered nurse by Tunbridge Wells Care Centre between August 2018 and January 2019 when she was dismissed.

10. When Ms Stoeva applied for the job at Tunbridge Wells Care centre on 1 August 2018, she completed an application form and answered 'no' to the question 'have you ever been dismissed from a previous position' (charge 4).'

The panel also heard evidence from you under oath.

Background

The charges relate to two referrals received by the NMC in relation to your employment as a registered nurse.

The first referral was made by Russell Court Nursing Home (Russell Court) in June 2017. You started working at Russell Court in July 2016. It is alleged that on 19 August 2016, you gave Patient A more than the prescribed amount of Bumetanide in the morning and after lunch. Russell Court issued a formal verbal warning in relation to this alleged error.

It is also alleged that when working at Russell Court on 23 February 2017 you gave Resident B Azithromycin on a Thursday when it should only have been administered on Monday, Wednesday and Friday. You were dismissed from Russell Court on 24 February 2017.

The second referral was made by Tunbridge Wells Care Centre (Tunbridge Wells), part of Canford Healthcare, in January 2019. You have accepted that when you applied for the role at Tunbridge Wells in August 2018 you answered '*no'* on the application form in response to the question '*have you ever been dismissed from a previous position'*. It is alleged that this was not accurate as you were dismissed from five previous employers as specified in charge 5 between 2016 and 2018, including Russell Court.

In addition, it is alleged that on 23 December 2018, whilst working at Tunbridge Wells you administered Losartan to a patient when it was not due. You were dismissed from

Tunbridge Wells in January 2019.

During the course of the NMC investigation a further concern was made about your employment at Greathed Nursing Home (Greathed). You have accepted that on 29 May 2018 you administered Hydroxocobalamin, which is a B12 injection, to Resident C two months early as it was prescribed to be given every three months.

Before making any findings on the disputed facts, the panel heard and accepted the advice of the legal assessor who referred to *Ivey v Genting Casinos* [2017] UKSC 67 and *Hussain v GMC* [2014] EWCA (Civ) 2246.

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

Charge 5

5. Your actions at charge 4 was dishonest in that you sought to conceal that you had been dismissed by one or more of the following employers;
    a. West Bank Care Home
    b. Emily Jackson Nursing Home
    c. Russell Court Nursing Home
    d. Maidstone Care Centre
    e. Greathed Manor Nursing Home

This charge is found proved.

In reaching this decision, the panel had regard to the test for dishonesty set out by Lord Hughes in paragraph 74 of *Ivey*:

> *'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts…. When once his actual state of mind as to knowledge or belief as to*

facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel noted that you admitted charge 4 and therefore have admitted that you answered no to the question '*have you ever been dismissed from a previous position'* on the application form on 1 August 2018.

The panel also noted that you do not deny that you were dismissed from the employers listed in the charge. The panel had sight of dismissal letters from West Bank Care Home, Emily Jackson Nursing Home, Russell Court and Greathed. Whilst the panel did not have sight of a dismissal letter from Maidstone Care Centre, you have not disputed that you were dismissed from there in August 2017.

The panel noted that you deny that you were aware that you had been dismissed from Greathed at the time you filled out the form. However, the panel determined that you were aware that you had previously been dismissed from at least one of the employers when you filled out the form on 1 August 2018.

The panel noted that in your oral evidence you stated that you were stressed when you were filling in the form on 1 August 2018 and filled it out on a corridor. You stated that you made a '*mistake'* when you ticked the incorrect box. However, the panel considered that the form had a number of elements, and you had been able to fill out your personal details, education and training history with apparently no issues. The panel considered that the employment history section, which contained five yes or no questions, was less complex than the other aspects of the form. The panel therefore did not accept your account that you did not fill the form out correctly due to your circumstances at the time.

The panel also noted the employment history section of the form which required written answers, required you to record a reason for leaving. By stating in this section '*see the attachment copy of CV'*, you avoided recording the reason for leaving four of your previous employers. The panel noted that the only reason for leaving you have recorded is '*not good management'*. This was not true because you had been dismissed- as you accepted in the statement of agreed facts.

The panel further noted that at the end of the application form, you signed a declaration that to the best of your knowledge and belief the contents of the form were true and correct.

The panel further noted that in May 2016 you had appealed your dismissal from Emily Jackson stating '*the punishment is dismissal is too severe…it will probably terminate my career'* [sic]. Further, one of the reasons for your dismissal from Emily Jackson was '*failure to disclose previous employment and reasons for leaving'*. The panel therefore determined that you were aware of the significance of being dismissed from employment and should have been aware of the importance of accurate and honest completion of application forms.

The panel determined that considering your knowledge at the time, namely that you had previously been dismissed from other employers, your action was dishonest by the standards of ordinary, decent people. The panel determined that ordinary, decent people would consider it dishonest to inaccurately answer '*no'* to such a question on an application form for employment. This charge is therefore found proved.

Charge 6

6. On 23 December 2018 administered 50mg Losartan to Patient A which was not due.

This charge is found not proved.

In reaching this decision, the panel took into account the MAR chart for Patient A on the relevant dates, which the panel considered was difficult to interpret.

The panel determined that in relation to this charge, you have provided a consistent account that you signed the MAR chart before administering the medication, realised that the medication was not due, and crossed out your signature.

The panel considered that the NMC has relied on the stock count of medication on the MAR chart. However, the panel determined that this stock count was not reliable. The panel noted that Witness 3 stated that it was not possible to confirm what the stock count was at the start of the MAR chart, as it was possible that some medication was carried over from the previous month. The panel determined that it could not rely on the stock count as evidence that you had given the medication.

The panel determined that it has received inconsistent evidence from the NMC witnesses as to the correct process to follow when a MAR chart is signed in error, as one witness stated you would write an N, whilst another stated that you would draw a line through your signature and sign this amendment as well as making a note on the reverse of the MAR chart. The panel accepted that on 23 December 2018, you had written something on the MAR chart. However, the panel could not make out whether you had, or had not, crossed out your signature.

The panel determined that the NMC has not proved that you did administer the medication, and therefore found this charge not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to

practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no burden or standard of proof at this stage, and it has therefore exercised its own professional judgement.

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

Submissions on misconduct and impairment

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.'*

Following handing down its decision on facts, the panel was provided with training certificates. The panel was also provided with a NMC impairment bundle, which included details of a caution order previously imposed by a panel of the NMC's Conduct and Competence Committee on 13 July 2017.

Ms Marcelle-Brown invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Ms Marcelle-Brown identified the specific, relevant standards where she suggested your actions amounted to misconduct. She also referred the panel to the medication policies in

place at Russell Court. She submitted that you had clearly breached the NMC code and policies in place. She submitted that it is highly relevant that your actions occurred whilst you were under a NMC caution for similar concerns, and that at a previous NMC hearing you had stated you would not repeat the conduct for which you received a caution.

Ms Marcelle-Brown stated that the NMC's guidance on *Serious concerns which are more difficult to put right* states that '*giving a false picture of employment history which hides clinical incidents in the past'* is a more serious concern. She further submitted that you repeatedly made medication errors, which increases the seriousness. She submitted that the concerns are serious and wide ranging and public confidence in the nursing profession would be undermined should a finding of misconduct not be made.

Ms Marcelle-Brown 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin)*.*

Ms Marcelle-Brown submitted that all four limbs of Dame Janet Smith's 'test' are engaged. She invited the panel to make a finding of impairment to protect the public and to uphold the public interest. She acknowledged the training certificates provided but submitted that several are not relevant. She submitted that there is no evidence of insight and you have not provided evidence of any reflection.

Ms Marcelle-Brown submitted that your conduct fell significantly short of the standards expected and is therefore harder to remedy. She submitted that your dishonesty is linked to your nursing practice and was sustained. She submitted that public confidence in the nursing profession would be undermined should a finding of impairment not be made.

Ms Hucker stated that she acknowledges that your dishonesty amounts to misconduct. In relation to the medication errors, she submitted that the errors were different in nature, and amounted to mistakes as opposed to misconduct. She stated that in relation to both errors found proved, you alerted someone as soon as you became aware, and no harm was caused to any patient. She also reminded the panel of your personal circumstances at the time.

Ms Hucker referred the panel to the training certificates provided and submitted that these were relevant. She submitted that you worked at Tunbridge Wells with only one concern, which the panel has found not proved, raised about your clinical practice. She submitted that the medication errors found proved do not amount to misconduct.

Ms Hucker submitted that whilst she acknowledges that your dishonesty amounts to misconduct, it is not of the most serious kind. She submitted that it is relevant that Witness 4, who worked at Tunbridge Wells, was aware of at least one of your previous dismissals. She submitted that patients were not put at risk due to your actions, and there are significant mitigating factors. She invited the panel to consider your personal circumstances, including the evidence of Witness 6, and the context of your dishonesty. She referred the panel to the training you have completed entitled '*Powerful Honesty: Communication and Relationships Skills'*. She submitted this shows insight in that it demonstrates you recognise there is an issue you need to address.

The panel accepted the advice of the legal assessor which included reference to the following cases: *Nandi v GMC* [2004] EWHC 2317 (Admin), *Mallon v GMC* [2007] CSIH 17, *Holton v GMC* [2006] EWHC 2960 (Admin), *Meadow v GMC* [2007] QB 462*, Cohen v GMC* [2008] EWHC 581 (Admin), *Grant*, *SRA v Sharma* [2010] EWHC 2022 (Admin) and *Parkinson v NMC* [2010] EWHC 1898 (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.

In relation to the medication errors, set out in charges 2 and 3, the panel determined that these did not amount to misconduct. The panel noted that the errors occurred over a year apart, and that you informed your employer when you became aware of the errors. The panel determined that the errors were not so serious as to be considered deplorable.

The panel went on to consider whether your conduct set out in charges 4 and 5 amounted to misconduct.

The panel was of the view that your conduct at charges 4 and 5 did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

> ***'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…'*

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 dishonestly failing to disclose previous dismissals from employment was extremely serious and fell seriously short of the conduct expected of a nurse. The panel was satisfied that your conduct at charges 4 and 5 did amount to misconduct.

Decision and reasons on impairment

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

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

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

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

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

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

Your misconduct in acting dishonestly had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

Regarding insight, the panel considered that it has no evidence of insight into your dishonesty. The panel considered that you have previously been subject to a caution order following strikingly similar allegations. The panel noted that despite demonstrating insight at the previous hearing through admitting you acted dishonestly and stating that you would not act in the same way, you repeated the type of conduct then found proved just over a year later. In particular, the panel determined that due to this dishonesty being of a strikingly similar nature just over a year after your previous three-year caution order was imposed, it could not be satisfied that you have demonstrated why there would not be a further recurrence now when there had been a recurrence in the past.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel considered the training certificates provided, only one of which appeared to be relevant, which was entitled '*Powerful Honesty: Communication and Relationships Skills'*. However, the panel determined that a three-hour online training course was insufficient to address the

concerns in this case. In light of your lack of insight, it determined there was a high risk of repetition of dishonest conduct of the nature found proved.

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. The panel determined that public confidence in the nursing profession and the NMC as its regulator would be significantly undermined if a finding of impairment were not made in a case where a nurse has acted dishonestly in the same way a NMC sanction was previously imposed for and where there is a lack of insight.

The panel also determined that a finding of impairment is necessary on the grounds of public protection. The panel considered that it is important that employers are aware of any potential employee's previous employment history (particularly medication errors and conduct that may have led to dismissal) prior to recruitment to assess any potential risk presented to patients.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor, which included reference to the following cases: *CHRE v NMC and Leepe*r [2004] EWHC 1850 (Admin), *Parkinson v NMC* [2010] EWHC 1898 (Admin) and *Moijueh v NMC* [2015] EWHC 1999 (Admin).

Submissions on sanction

Ms Marcelle-Brown informed the panel that in the Notice of Hearing, dated 7 July 2022, the NMC had advised you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired. She referred the panel to the SG and outlined the aggravating factors she submitted were present.

Ms Marcelle-Brown submitted that due to the serious nature of your dishonesty, a striking-off order is the only appropriate sanction. She submitted there is evidence of attitudinal issues, and your conduct is incompatible with continuing registration. She submitted that conditions of practice could not be formulated that would address the concerns. She further submitted that a suspension order would not satisfy the public interest or sufficiently protect the public.

Ms Hucker submitted that whilst she does not deny the concerns are serious, a striking-off order would be disproportionate. She submitted that your dishonesty is not at the most serious end of the spectrum, it was not directly related to patient care and was not an abuse of power. She invited the panel to consider the context of your dishonesty and your personal circumstances at the time. She also referred the panel to the evidence of Witness 6 [PRIVATE].

Ms Hucker submitted that your lack of insight can be addressed, and you have started to take steps by completing training. She submitted you have provided a genuine apology and have accepted you made a mistake. [PRIVATE] She stated that it is relevant that

when confronted at Tunbridge Wells in December 2018, you were open and honest about your employment history.

Ms Hucker submitted that public confidence would not be undermined if a striking-off order were not made if the public were aware of your personal circumstances. She submitted that a suspension order would satisfy the public interest. She further submitted that it was possible to formulate conditions of practice that would address the concerns in this case.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- You were previously referred to the NMC and received a caution order for dishonesty
- The current referral relates to your actions whilst subject to the caution order
- You repeated dishonesty of the kind found previously proved
- You have shown a lack of insight

The panel also took into account the following mitigating feature:

- Your difficult personal circumstances at the time

Whilst the panel did accept that you had difficult personal circumstances at the time of your dishonesty, it determined that these were not so significant as to outweigh the aggravating factors in this case. [PRIVATE]

The panel first considered whether to undertake mediation or take no further action, as required by Article 29(4) of the Nursing & Midwifery Order 2001 (the Order). It considered that both of these options would be inappropriate as neither would satisfy the overwhelming public interest in imposing an appropriately serious sanction on a nurse found to have been dishonest.

The panel then moved on to consider the available sanctions set out in Article 29(5) of the Order.

The panel considered the imposition of a caution order but determined that, due to the seriousness of the case, and the public protection and public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel determined that due to your dishonesty, and lack of insight, there are no practical or workable conditions that could be formulated. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and would not protect the public or uphold the public interest.

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

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

The panel acknowledged that the charges found proved by this panel relate to a single instance of misconduct. However, the panel determined that there is evidence of attitudinal problems due to your lack of insight and repetition of dishonest conduct whilst subject to a NMC caution order. The panel also considered that it has found that you have a lack of insight and there is a risk of repetition.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction as it would not sufficiently protect the public or uphold public confidence.

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?'*

The panel determined that your dishonesty was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with you remaining on the register. The panel noted that your misconduct occurred whilst you were subject to a NMC caution order for strikingly similar concerns. The panel was of the view that the findings in this particular case demonstrate that your conduct was serious and to allow you 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 your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themself, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

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 your own interest until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Marcelle-Brown. She invited the panel to impose an interim suspension order for a period of 18 months to cover the appeal period on the same grounds as the panel found your fitness to practise impaired.

Ms Hucker made no further submissions.

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 determined that an interim order was necessary to protect the public and uphold the public interest.

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 to cover any potential appeal period.

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

That concludes this determination.