Nursing and Midwifery Council
Fitness to Practise Committee

Substantive Hearing
Thursday 13 April 2023 – Tuesday 25 April 2023

Virtual Hearing

Name of Registrant:	**Jayne Catherine Denyer**
NMC PIN	00J2385E
Part(s) of the register:	Registered Midwife – 30 September 2003
Relevant Location:	Brighton
Type of case:	Misconduct
Panel members:	Rebecca Holyhead (Chair, lay member) Laura Wallbank (Registrant member) Kevin Connolly (Lay member)
Legal Assessor:	Paul Housego
Hearings Coordinator:	Nandita Khan Nitol (13 – 20 April 2023) Phil Austin (21 April 2023) Amanda Ansah (21 & 24 April 2023) Nandita Khan Nitol (25 April 2023)
Nursing and Midwifery Council:	Represented by Anna Leatham, Case Presenter
Ms Denyer:	Not present and unrepresented at the hearing
Facts proved:	Charges 1, 2, 3, 4, 5, 7 & 8
Facts not proved:	Charge 6
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	**Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Denyer was not in attendance and that the Notice of Hearing letter had been sent to Ms Denyer's registered email address by secure email on 16 March 2023.

Ms Leathem 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).

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 that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Ms Denyer'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 Ms Denyer was 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 Ms Denyer

The panel next considered whether it should proceed in the absence of Ms Denyer. It had regard to Rule 21 and heard the submissions of Ms Leathem who invited the panel to continue in the absence of Ms Denyer.

Ms Leathem referred the panel to the email from Ms Denyer, dated 11 April 2023, which stated:

'Unfortunately I am unable to attend the hearing, but I am happy for the panel to proceed in my absence.'

Ms Leathem submitted that Ms Denyer had voluntarily absented herself and has not applied for an adjournment. She submitted that adjourning the hearing today would be unlikely to secure Ms Denyer's attendance at a future date. Ms Leathem informed the panel that three witnesses has been warned to give oral evidence to this panel and the allegations are from 2020. Therefore, Ms Leathem submitted that delaying this matter further may have an adverse effect on their recollection in relation to the charges. She further submitted that the public interest elements of this case suggest that this matter should be dealt with expeditiously.

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'* as referred to in the case of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Ms Denyer. In reaching this decision, the panel has considered the submissions of Ms Leathem, the email from Ms Denyer and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* 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 Ms Denyer;
- Ms Denyer has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;

- One witness would attend today to give live evidence and two others are due to attend;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in January 2020;
- 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 Ms Denyer in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Ms Denyer at her registered address and she has made response to the allegations. Ms Denyer will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgment, 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 which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Denyer's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide oral evidence or make submissions at the hearing on her own behalf.

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

Details of charge (as amended)

That you, a registered midwife, on or around 22 January 2020:

1) Wrote Patient A's signature on her medical notes titled "BPAS Consent Form 2". **[PROVED]**

2) Your conduct in Charge 1 was dishonest in that you deliberately sought to create the misleading impression that Patient A had signed the "BPAS Consent Form 2" when you knew she had not. **[PROVED]**

3) Incorrectly documented on Patient A's records that you had taken observations when you had not. **[PROVED]**

4) Your conduct in Charge 3 was dishonest in that you deliberately sought to create the misleading impression that you had taken observations when you knew that you had not. **[PROVED]**

5) Recorded one or more of the inaccurate entries in Schedule 1 in Patient A's records. **[PROVED BY ADMISSION]**

6) You did not offer adequate patient care in that an in-depth conversation about contraception methods did not take place during Patient A's treatment appointment. **[NOT PROVED]**

7) You breached patient confidentiality when you sent Patient A's discharge letter to their GP when it clearly set out on Patient A's notes not to do so. **[PROVED]**

8) You did not obtain informed consent from Patient A for the use of misoprostol in that you did not explain to them that the medication was not licensed for abortion. **[PROVED]**

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

Schedule 1

Planned contraception confirmed with client – condom tick box selected
Has discussed / received contraception – yes tick box selected
Consent form offered – yes tick box selected
Consent box signed – yes tick box selected
Client consent complete – ticked
Misoprostol consent signed - ticked
Use of misoprostol should have been marked as ‘yes’ but was marked ‘no’

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Leathem, to amend the wording of charge 5.

Ms Leathem submitted that the proposed amendment was to correct a typographical error, that was to delete the word ‘of’ and to insert the word ‘or’ as the third word of charge 5. She further submitted that the proposed amendment does not change the nature of the charge, or the case Ms Denyer has to answer and that the proposed amendment would provide clarity and more accurately reflect the evidence.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that it was no more than a typographical error and that there would be no prejudice to Ms Denyer 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.

The amended charge is as follows:

"That you, a registered nurse:

5) Recorded one ~~of~~ **or** more of the inaccurate entries in Schedule 1 in Patient A's records.

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

Decision and reasons on application to admit further evidence

The panel heard an application made by Ms Leathem under Rule 31 to allow attachments from Patient A into evidence. Ms Leathem submitted that attachments included images of the reverse of two bank cards showing the signature of Patient A and a screenshot of text messages sent by her on 22 January 2020.

With regards to the images of bank cards, Ms Leathem referred to the email dated 1 March 2020 from Patient A to the Client Field Manager of British Pregnancy Advisory Service (BPAS) and informed the panel that the email was already in the hearing papers (exhibit bundle). In relation to the images, Ms Leathem pointed out that at the bottom of that email there were two lines which said that 'image 002 and image 003'. However, she added that those two images of the bank cards were not attached in the exhibit bundle. Therefore, Ms Leathem submitted that those two images of banks cards were relevant to the charges and sought to admit them into evidence before the panel.

With regards to the screenshot of the two text messages, Ms Leathem again referred to the same email mentioned above and submitted that the screenshot was relevant to the explanations given in the email in relation to the timings of the arrival/ departure from the clinic including administrations of the medicine. Therefore, Ms Leathem invited the panel to admit the screenshot of the two text messages into evidence.

Finally, Ms Leathem submitted that admitting those attachments would not cause any unfairness to Ms Denyer as she already had seen them as exhibits from Patient A.

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

The panel carefully considered the application of Ms Leathem and determined that it would admit the screenshot of the two text messages but not the images of the bank cards with signatures.

With regard to the images of the bank cards with signatures, the panel determined that it could be relevant to the expert. However, the panel noted that the NMC had picked samples of Patient A's signature in advance. They had provided the expert with a list containing nine samples (of which some were duplicates so that there were five different examples) on which the expert relied when he produced his report. The panel determined that it would not be fair to expect him to revise his opinion as he gave evidence by the presentation of two new examples of handwriting. The panel also determined that it would be inappropriate for the panel itself to be influenced one way or the other by itself considering the new sample signatures.

In relation to the screenshot of the two text messages, the panel determined that they gave an insight of the time that Patient A left her appointment. The panel concluded that there was no reason to doubt their authenticity as the time displayed was from a mobile phone in use by Patient A at the time.

In these circumstances, the panel determined that there was no unfairness in allowing the evidence to be adduced. It would be fair and relevant to accept these messages into evidence for it was related to the uncontentious evidence of Ms Denyer's own record that the medication was administered at 13:05 and the Standard Post Abortion Discharge Plan was completed at 13:15.

Decision and reasons on facts

At the outset of the hearing, the panel considered the Case Management Form (CMF) dated 4 October 2021 and signed by Ms Denyer. In the CMF Ms Denyer made a full admission to Charge 5 and partly admitted Charging 6. In Charge 6, she accepted that she did not offer an in-depth conversation about contraception methods but denied that her failure to do so amounted to inadequate patient care.

The panel therefore finds Charge 5 proved in its entirety, by way of Ms Denyer's admissions.

The panel noted that Ms Denyer accepted the facts set out in Charge 6, but the charge is of inadequate patient care which Ms Denyer denied. Accordingly, the panel did not treat this as an admission to Charge 6.

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 Leathem and the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Ms Denyer.

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:

- Patient A: Patient A

- Mr N: Director of Nursing and Quality, at the time responsible for the clinic attended by Patient A

- Mr H: Forensic Handwriting expert

Patient A was a direct witness in relation to the charges.

Background

The NMC received a referral about Ms Denyer's fitness to practise on 20 March 2020. The referral came from a patient ('Patient A'). At the time of the concerns raised in the referral, Ms Denyer was working as a midwife for the British Pregnancy Advisory Service ('BPAS') in Brighton.

On 15 January 2020 Patient A attended an hour-long consultation meeting at BPAS Bognor. On 22 January 2020, Patient A attended the BPAS clinic in Brighton, for an appointment at 13:00 arranged for an Early Medical Abortion (EMA). She stated that Ms Denyer met her only for a few minutes.

On 24 January 2020, Patient A raised concerns with BPAS that her patient information had been allegedly shared with her General Practitioner (GP), without her consent, and that it was documented three times in her patient notes that she did not give her consent for her GP to be contacted.

Patient A was then sent copies of her BPAS records. Whilst reviewing her records Patient A considered that her signature had been forged on a Consent Form 2, for the EMA.

In addition, Patient A complained that Ms Denyer failed to discuss the unlicensed status of the drug misoprostol and/or obtain her informed consent about this drug being taken.

Patient A stated that the notes Ms Denyer made about her at the treatment appointment were inaccurate and incorrect. Patient A alleged that some information was ticked as '*no*' on the forms which should have been ticked as '*yes*' and that contraception was not discussed in depth.

Patient A also alleged that Ms Denyer made serious mistakes in her patient care. She alleged that Ms Denyer had recorded observations which were not taken. Patient A alleged that she was sure that the observations were not taken because at the time of the appointment she wore a thick coat and a cross body bag, neither of which she took off.

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 both the NMC and Ms Denyer.

Charge 1

That you, a registered midwife, on or around 22 January 2020:

1) Wrote Patient A's signature on her medical notes titled "BPAS Consent Form 2".

This charge is found proved.

This charge required the panel to evaluate evidence more broadly than the specific words of the Charge.

The panel found the evidence of Patient A to be credible and determined that her evidence was inherently plausible. Patient A's oral evidence was materially consistent with contemporaneous statements she made at the time of events in January 2020. Patient A could recall precise timings even after the passage of time since the incident. Nonetheless, the panel found that the evidence was reliable as it was supported by

documentary exhibits, principally the note made by Ms Denyer of the time the drug was administered, the time Ms Denyer recorded on the Standard Post Abortion Discharge Plan, the noted time of arrival, and the text messages sent by Patient A to her partner at the time the treatment concluded.

The panel also noted all the records pertaining to the treatment of Patient A at the appointment on 22 January 2020, email correspondences between the Client Field Manager of BPAS and Patient A and an internal report prepared by another manager of BPAS.

The panel noted the oral and written statement of Patient A, which stated:

> *'My appointment was at 1pm, I arrived at approximately 12.45 and sat in the waiting room on my phone. I was called in a minute or so after 1pm. My records show that treatment was administered at 13.05, I was then discharged at 13.07 when I text my partner on my way out of the building (see attached message where I confirmed I was ready to be collected at 13.07. I confirmed I was outside the building at 13.09 as he had not yet arrived). This is not enough time (a maximum of 5 minutes) for all the information necessary to be discussed in order to obtain informed consent for treatment.'*

The panel noted that the medication was administered at 13:05 on Ms Denyer's own account in the records. The panel heard in evidence from Mr N that it was usual practice that administration of the medication was done last in the appointment. Patient A's oral evidence was that she was given the medication at the end of her appointment. This is supported by text messages at 13:07 sent to her partner saying '*done*' and at 13:09 saying '*outside*'.

Ms Denyer herself timed the Post Discharge Abortion Form at 13:15. The panel noted that all the evidence supported that the medication was administration at 13:05 and there was

therefore no reason to doubt that the post discharge form was completed at 13:15 by Ms Denyer after Patient A had left the building.

According to the evidence, Patient A arrived at the clinic at 12:46 but the panel noted that there was no firm time recorded when Patient A went in to see Ms Denyer. In the BPAS investigation the Client Field Manager and subsequently the Manager of the Unit said that it was likely that the appointment started soon after 12:46. There was no basis given for that statement and the panel determined that they simply assumed that was the case, because treatment appointments usually take between 15-20 minutes, and it was clear that Patient A had left soon after 13:05.

Patient A gave credible evidence that approaching 13:00 she was thinking of texting her partner to say that the appointment might run be running late, and then she was called in for her treatment. The panel accepted the evidence of Patient A that her appointment with Ms Denyer commenced a couple of minutes before 13:00. The panel noted that there was no dispute about the time the medication was administered. This was at 13:05, and so about 7 minutes into the appointment, and at its end, as Patient A had left the building by 13:09 (her text message to her partner so timed was “Outside”).

The appointment involved a substantial number of areas of care all of which required documentation, the panel determined it was unlikely that Ms Denyer accomplished all these areas of care during the short time Ms Denyer was with Patient A. The panel found it is more likely than not that much of the documentation was completed between 13:07 and 13:15, after Patient A had left, and the panel decided that aspects of it were inaccurate or invented.

The panel also noted that the consent section of Consent Form 2 relating to the administration of misoprostol was unsigned by either Patient A or Ms Denyer.

Taking that all into account the panel was of the view that Ms Denyer had not obtained the signature of Patient A on Consent form 2 during the appointment. The panel determined

that it was not possible for Ms Denyer to carry out everything on the form and complete the form itself in the time available, which is why she took between 6 and 8 minutes to fill in the paperwork after Patient A had left.

The panel determined that this did not necessarily prove that Ms Denyer did not obtain verbal consent from Patient A. However, it determined that it was more likely than not that she had not obtained Patient A's signature on Consent Form 2. The panel determined that it is likely that after Patient A left the building, Ms Denyer completed the paperwork including the Standard Post Abortion Discharge Plan. This gave her the opportunity to simulate Patient A's signature on the Consent Form. The panel considered that as the Registered Midwife responsible for Patient A care who administered the medication, Ms Denyer had a motive to add Patient A's signature on the Consent Form 2.

The panel took careful note of Mr H's expert opinion, which he provided through a written report and oral evidence. The panel took full note of the limitations of the examination of the samples of Patient A's signature, which had been provided electronically and it probed Mr H carefully during his oral evidence. Mr H stated that it was more likely than not that the suspect signature was not that of Patient A, and it was consistent with someone attempting to simulate Patient A's signature.

The panel also took account of Patient A's evidence that this was not her signature.

The panel noted that Ms Denyer had completed Patient A's records after Patient A had left the building, and decided it was more likely than not that Patient A had not signed the consent form.

The panel did not consider that it was likely that anyone other than Ms Denyer could or would have signed the form.

Accordingly, the panel decided that it was more likely than not that Ms Denyer signed the form with a simulation of Patient A's signature, copied from other notes in Patient A's records.

In the panel's judgment, Ms Denyer by signing the form with a simulation of Patient A's signature was concealing her own error in failing to obtain the signature of Patient A during the treatment appointment.

For all the reasons above, the panel concluded that first Patient A had not signed on the 'Consent form 2' and secondly that Ms Denyer had signed the form with a simulation of Patient A's signature.

The panel therefore found Charge 1 proved on the balance of probabilities.

Charge 2

2) Your conduct in Charge 1 was dishonest in that you deliberately sought to create the misleading impression that Patient A had signed the "BPAS Consent Form 2" when you knew she had not.

This charge is found proved.

This charge required the panel to decide whether the facts found proved in relation to Charge 1 amounted to dishonesty.

In considering this charge the panel took into account the NMC guidance on *"Making decisions on dishonesty charges*" which states the following:

"*To help the panel focus on the central issues and be able to express this in their reasoning, it needs to consider the following:*

- *What the nurse, midwife or nursing associate knew or believed about what they were doing, the background circumstances, and any expectations of them at the time*
- *Whether the panel considers that the nurse, midwife or nursing associate's actions were dishonest, or*
- *Whether there is evidence of alternative explanations, and which is more likely.*

In reaching this decision, the panel took into account its decision on charge 1. The panel found Charge 1 proved. The signature on Consent Form 2 was not signed by Patient A rather it was signed by Ms Denyer purportedly as the signature of Patient A.

The panel had regard to the Operational/Clinical Policies and Procedures (Consent to Examination and Treatment) provided by BPAS which were operational in 2020, and stated that:

> *2.1 For significant procedures, it is essential for health professionals to document clearly both a client's agreement to the intervention and the discussions which led up to that agreement. This may be done either through the use of a consent form (with further detail in the client's notes if necessary), or through documenting in the client's notes that they have given verbal consent.*
>
> *2.4 At BPAS, written consent is required for:*
> *all medical abortions*
> *…*

The panel noted that EMA is a significant procedure and at the time, written signatures were required to confirm consent for that procedure. It was not, in the panel's judgment, relevant that Covid-19 had brought changes so that no consent signature was now required. At the time it was mandatory for patient consent to be recorded by the patient signing the consent form, and this was regarded as important. Mr N's evidence was that if

a Midwife failed to obtain a signature of a patient, the expectation would be that the patient would be recalled to sign the form, or there would be a documented subsequent discussion recording that the patient had given informed consent to the procedure.

The panel took into account its decision on Charge 1, that Ms Denyer had simulated the signature of Patient A on the form. It also considered the BPAS policy and the evidence of Mr N, that the expectation on Ms Denyer was that she should have been open about her omission and noted it accordingly. In that, Ms Denyer could have contacted the patient to return to sign it or make a retrospective endorsement.

The panel also took careful note of the evidence of Mr H, where he told the panel that the signature on the form was *'consistent with attempted simulation'* and that *'the available copy documents provided strong evidence that Patient A was not responsible for the signature in her name shown on BPAS Consent Form 2'*.

The panel considered ordinary decent members of the public would consider that deliberately simulating Patient A's signature to conceal the fact that she had omitted to obtain Patient A's signature was a dishonest action. It was done to create the misleading impression that Patient A had signed the consent form when she had not.

The panel therefore found Charge 2 proved.

Charge 3

3) Incorrectly documented on Patient A's records that you had taken observations when you had not.

This charge is found proved.

In reaching its decision the panel considered its overall findings, set out above, particularly relating to the length of appointment time and the substantial number of areas of care required to be completed as part of the appointment.

The panel noted the evidence of Mr N that it normally takes about three minutes or so to take observations and heavy clothing needed to be removed to take the reading of blood pressure properly. He added that it was best to do this on the bare arm but at the minimum over a light T-shirt or top.

The panel noted that Patient A had always been adamant that she did not remove any of her clothing for Ms Denyer to take her observations. She had consistently said that she did not remove her coat, nor take off a cross body bag she was wearing. The panel found the evidence of Patient A credible, and consistent with the short face-to-face contact Patient A had with Ms Denyer. The panel accepted Patient A's evidence on this point.

The panel determined that it was more likely than not that Ms Denyer did not undertake the observations recorded in Patient A's records of her treatment appointment.

The panel therefore found Charge 3 proved on the balance of probabilities.

Charge 4

4) Your conduct in Charge 3 was dishonest in that you deliberately sought to create the misleading impression that you had taken observations when you knew that you had not.

This charge is found proved.

In reaching its decision the panel considered its decision for Charge 3. The issue for the panel was whether the facts found proved in Charge 3 amounted to dishonesty.

The panel accepted Mr N's evidence that observations were important as it was necessary to ensure that a patient had no contraindications the procedure, including ensuring that a patient's blood pressure was not too high, and that there were no signs of infection.
The panel determined that, in the absence of taking Patient A's observations, Ms Denyer had fabricated and created a set of observations.

The panel found Ms Denyer's actions would be considered dishonest according to the standards of ordinary decent people.

The panel therefore found Charge 4 proved.

Charge 5

5) Recorded one or more of the inaccurate entries in Schedule 1 in Patient A's records.

This charge is proved by admission.

Ms Denyer accepted that she recorded one of more of the inaccurate entries in Schedule 1 in Patient A's records.

The panel considered which of the particulars in the Schedule was incorrect:

'planned contraception confirmed with client – condom tick box selected'

The panel determined that Patient A's evidence was clear, that condoms were not her preferred method of contraception so it was incorrect to tick the box to say that they were. It was uncontested that condoms were provided as standard procedure to reduce the risk of infection post EMA.

'had discussed/received contraception – yes tick box selected'

There was a brief discussion about contraception, and she did receive condoms for infection control reasons, and they are means of contraception and so the second item in Schedule 2 was not found proved.

'consent form offered – yes tick box selected'

The panel was unable to find such a box on either form so this element was not found proved.

'consent box signed – yes tick box selected'

The panel had found that Patient A did not sign the consent form so this element was found proved.

'client consent complete – ticked'

The panel noted that the client consent was not complete because Patient A did not sign the consent form.

'misoprostol consent signed – ticked'

The consent to use misoprostol for the EMA section on Consent Form 2 was unsigned by Patient A or Ms Denyer. However, Ms Denyer had ticked 'misoprostol consent signed' on the treatment record.

'use of misoprostol should have been marked as 'yes' but was marked 'no''

It was evidence from Patient A's record that misoprostol was administered at 13:05 hours, so to tick "no" was an error.

In light of the above, the panel concluded that points 2 and 3 in the schedule were not proved but all the others were proved.

Accordingly, the panel found this charge (which refers to one or more items in the Schedule) proved.

Charge 6

6) You did not offer adequate patient care in that an in-depth conversation about contraception methods did not take place during Patient A's treatment appointment

This charge is found NOT proved.

Ms Denyer accepted that there was no in-depth conversation about contraception methods but she strongly denied that her failure to do so amounted to inadequate patient care.

The panel took account of Ms Denyer's response to the allegation, which stated that:

> …*'it is the role of the midwife at the Consultation stage* [the meeting in Bognor on 15 January 2020] *to discuss contraceptive methods during the Consultation process which occurs before any patient attends an appointment with me. Indeed, it appears from the Consultation notes (at page 30 of Exhibit 002) that Patient A attended the BPAS clinic based in Bognor and was attended to by [name redacted] during which time [name] has discuss (sic) contraception methods.'*

The panel also accepted Mr N's evidence that BPAS procedure was that contraception was discussed primarily at the consultation appointment, but he would expect the practitioner at the treatment appointment to follow up on the previous discussion.

By 22 January 2020, at the treatment appointment, Patient A had already decided on her preferred method of contraception. However, a prescription had not been arranged in time for that treatment appointment.

The panel determined that Ms Denyer did not have responsibility to have an in-depth conversation about contraception with Patient A at the treatment appointment on 22 January 2020. Ms Denyer was correct in providing condoms for prevention of infection purposes, and in signposting Patient A to her GP to deal with her contraceptive choice.

Therefore, the panel concluded that the depth of discussion that took place about contraception was adequate. Patient A had decided on her preferred methods of contraception. No prescription was available for Ms Denyer to give to Patient A and then she correctly signposted Patient A to her GP.

Therefore, the panel found this charge not proved.

Charge 7

7) You breached patient confidentiality when you sent Patient A's discharge letter to their GP when it clearly set out on Patient A's notes not to do so.

This charge is found proved.

The panel noted that every BPAS discharge letter was addressed to the patient's GP and a copy was handed to patients to use if they needed to access emergency care. If the patient had authorised the GP receiving a copy of the discharge letter, a copy would be sent to them. If not authorised, no copy would be sent to the GP and the only copy would be given to the patient.

The panel also noted that on the Standard Post Abortion Discharge Plan document prepared by Ms Denyer and timed at 13:15 the "GP/referrer letter sent" box was ticked

"*yes*". Ms Denyer said that she did not send the GP letter and that it was the administration team who do so.

The panel heard evidence from Mr N that the administration team checked the Standard Post Abortion Discharge Plan to ascertain whether the patient had given consent for the discharge letter to be sent to the GP.

Patient A had on three previous occasions stated that she did not want her GP informed. The panel considered that the only indication that set out that Patient A wanted the GP letter to be sent was Ms Denyer's tick in point 11 of the Standard Post Abortion Discharge Plan completed on 22 January 2020 at 13:15 which was after Patient A had left her appointment.

The panel concluded that by ticking the box "*sent to GP*", Ms Denyer was in fact sending a letter to the GP as charged because, by ticking that box, an administration assistant posted the letter.

Accordingly, this charge is found proved.

Charge 8

8) You did not obtain informed consent from Patient A for the use of misoprostol in that you did not explain to them that the medication was not licensed for abortion.

This charge is found proved.

The panel found this Charge proved. While widely used for abortion misoprostol is not licenced for this use. Patients are required to sign a form consenting to its use, once these details had been explained to them. In Patient A's case, the consent for misoprostol section on the consent form was not signed to say that she had given consent after an explanation of the drug.

"*Consent to the use of misoprostol*

I agree that misoprostol can be used as part of the treatment to terminate my pregnancy. I understand that misoprostol is not licensed for abortion but that doctors are allowed to prescribe it for this purpose and that it has been used worldwide safely and effectively for several years. I also understand that misoprostol would never be prescribed during a wanted pregnancy because it can harm the fetus so I confirm that I am sure that I wish my pregnancy to be terminated".

The panel determined that because the form was unsigned, that did not necessarily mean that there was no informed consent. However, the panel found that the treatment appointment was shorter than expected and that there were inadequacies in it. The panel also noted Patient A's written and oral evidence, that she had not been told about misoprostol being unlicensed. Taking account of all the factors in this matter, the panel concluded on the balance of probabilities that this Charge was 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 Ms Denyer'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 judgment.

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, Ms Denyer'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.'*

Ms Leatham 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 Leatham identified the specific, relevant standards where Ms Denyer's actions amounted to misconduct. She submitted that the following areas of the Code are breached by virtue of the conduct the subject of the charges, although the panel may identify other areas:

Charges 1 – 4

10 – Keep clear and accurate records relevant to your practice:

10.1 Complete records at the time or soon as possible after an event, recording if the notes are written some time after the event.

10.3 Complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.

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.

20.3 Act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment.

Charge 5

10 – Keep clear and accurate records relevant to your practice:

10.1 Complete records at the time or soon as possible after an event, recording if the notes are written some time after the event.

10.3 Complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements.

Charge 7

5 – Respect people's right to privacy and confidentiality:

5.1 Respect a person's right to privacy in all aspects of their care.

Charge 8

1 – Treat people as individuals and uphold their dignity:

1.2 Make sure you deliver the fundamentals of care effectively.

2 – Listen to people and respond to their preferences and concerns:

2.5 Respect, support and document a person's right to accept or refuse care and treatment.

4 – Act in the best interests of people at all times:

4.2 Make sure that you get properly informed consent and document it before carrying out any actions.

Ms Leatham submitted that the regulatory concerns that have been found proved in this case indicate a serious departure from the standards, put Patient A at risk of harm and fell short of what would be proper in the circumstances albeit limited to one patient and one incident, had the potential to expose patients to a risk of harm.

Ms Leatham noted that by falsifying records, the panel found that Ms Denyer was creating the misleading impression that Patient A had signed the consent form when she had not and fabricated a set of observations in the absence of taking the patient's observations. Patients and the public expect to be able to rely on registered nurses to deliver safe and effective care by acting with honesty and integrity.

Ms Leatham submitted that the individual charges in this case amount to serious misconduct but, if in doubt, it is submitted that the cumulative effect of the charges is such that this is serious professional misconduct.

Submissions on impairment

Ms Leatham 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 Leatham submitted that all four limbs of the Grant test are engaged in this case:

Acted in the past and or liable in the future to act so as to put a patient at unwarranted risk of harm

Ms Leatham submitted that whilst this was an isolated incident involving one patient, Ms Denyer's actions put them at risk of harm. The panel heard evidence as part of the facts stage about the psychological impact on Patient A. Upon discovering that her discharge letter had been shared with her GP without her consent, she described how it felt 'horrendous' and that her 'heart just sank'. In respect of not being able to give informed consent to misoprostol, Patient A described that, had she been given the information, she could have gone away and thought about the decision on the type of treatment. She was not provided with this opportunity.

As a result of the concerns more generally, Patient A described 'the negative impact this individual midwife has had has been immense' and 'so traumatic and relentless'. She felt as though she were on a 'conveyer belt' with her problem being passed off to another practitioner.

In respect of future harm, Ms Leatham submitted that BPAS did complete an audit of Ms Denyer's practice following the complaints and did not, at that time, find any issue. However, Ms Leatham submitted that as there was no evidence before the panel on any training completed since the event, the panel cannot be reassured that there is no risk of

future harm. This is particularly apparent where the concerns are very serious and had the potential to put patients at risk of harm.

Bringing the profession into disrepute and whether the professional has in the past breached and/or is liable in the future to breach a fundamental tenet of the profession

The fundamental tenets of the nursing, midwife and nursing associate professions are standards which are outlined in The Code. The Code is structured around four themes:

- Prioritising people
- Practising effectively
- Preserving safety
- Promoting professionalism and trust

Ms Leatham acknowledged that not all breaches of the Code require a finding of impairment but where a breach of the Code involves breaching a fundamental tenet of the profession, the Committee is entitled to conclude that a finding of impairment is required. The finding of impairment would be required to mark the profound unacceptability of the behaviour, emphasise the importance of the fundamental tenet breached, and to reaffirm proper standards or behaviour, as per the case of *Yeong v GMC* [2009] EWHC 1923 (Admin).

Ms Leatham submitted that, by virtue of Ms Denyer's actions, she has breached one or more of the fundamental tenets of the nursing profession.

Whether the professional has in the past acted and/or is liable in the future to act dishonestly

The Code states that professionals must act with honesty and integrity. Dishonesty can take many different forms and are outlined within the NMC guidance on dishonesty. In this case, there has been a falsifying of records.

Ms Leatham referred the panel to the case of *PSA v Health and Care Professions Council & Ghaffar* [2014] EWHC 2723 per Carr J's judgment at paragraphs 45 and 46, while each case will turn on its own facts, it will be an unusual case in which dishonesty is not found to impair fitness to practise. She submitted that in this case, the dishonesty was in the health and care environment, and gave rise to real public health risks.

Ms Leatham submitted that a finding of impairment is necessary to uphold proper professional standards and conduct and maintain public confidence in the profession. She further submitted that given the trusted and respected position of nurses within society, the dishonesty concerns in this case did not promote professionalism or trust and did not prioritise Patient A. Therefore, Ms Denyer's actions did bring the profession into disrepute.

Ms Leatham submitted that the dishonesty in this case is sufficiently serious that a finding of impairment should be made to mark that profound seriousness.

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 and *CHRE v NMC (1) and Grant (2) [2011] EWHC 927*.

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 Ms Denyer's actions did fall significantly short of the standards expected of a registered nurse, and that her actions amounted to a breach of the Code. Specifically:

> *'**Prioritise people***
>
> ***You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make***

sure that their dignity is preserved, and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld...

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

1.5 respect and uphold people's human rights

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.5 respect, support and document a person's right to accept or refuse care and treatment

4 Act in the best interests of people at all times

To achieve this, you must:

4.2 make sure that you get properly informed consent and document it before carrying out any action

5 Respect people's right to privacy and confidentiality

As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

10 Keep clear and accurate records relevant to your practice

To achieve this, you must:
10.1 complete records at the time or as soon as possible after an event, recording if the notes are written some time after the event
10.3 complete records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.

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, treating people fairly and without discrimination, bullying or harassment.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel determined that failing to obtain informed consent for a drug that is unlicensed for use in this circumstance and in addition simulating Patient A's signature on the consent form 2, with the intention of giving the impression that Patient A had signed it, when Ms Denyer knew that she had not, were serious failings.

The panel determined that Ms Denyer's actions in failing to undertake observations and concealing this omission, amounts to misconduct. The panel also determined that Ms Denyer's actions in making fictitious recordings of observations to create the impression

that she had undertaken them could only be to cover up the fact that she forgot to do them or did not do them at all. This was a serious failing and put Patient A at risk of harm. Furthermore, the panel considered that her actions were deliberate and dishonest.

The panel found that Ms Denyer'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, Ms Denyer'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; and/or*
>
> d) *has in the past acted dishonestly and/or is liable to act dishonestly in the future.’*

The panel finds that Patient A was put at risk and was caused emotional harm as a result of Ms Denyer’s misconduct. Ms Denyer’s misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious. The panel noted that Ms Denyer was a very experienced midwife and there was an expectation that she should have known what was expected of her and what the responsibilities her role required. The panel noted that Ms Denyer stated that Patient A’s appointment was not memorable and was of the view that this was a usual appointment.

Regarding insight, the panel considered Ms Denyer's reflective piece which although undated, was prepared in connection with this hearing. The panel was of the view that Ms Denyer has demonstrated very little insight and has not accepted the impact her actions had on Patient A and how they impacted negatively on the reputation of the midwifery profession. The panel was of the view that in her reflective piece, Ms Denyer has compounded the issues and has denied any responsibility. The panel determined that although Ms Denyer's reflective statement purports to demonstrate insight into her wrongdoing, it is undermined by the fact that she denied doing what she did. The panel was of the view that this was reinforced by the fact that she partly deflected responsibility to Patient A.

The panel has carefully considered the written character references provided on behalf of Ms Denyer by her colleagues.

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 Ms Denyer has taken steps to strengthen her practice. The panel noted that it would be difficult for Ms Denyer to demonstrate strengthened practice when she has been found to be dishonest. Notwithstanding, the panel considered the information she provided regarding her enrolment on three training courses. However, the panel has not been provided with any evidence of completion of these courses and it has had no information as to Ms Denyer's practice since the submission of the case management form in October 2021.

The panel is therefore of the view that there is a risk of repetition based on Ms Denyer's lack of insight into how her actions impacted Patient A and on the midwifery profession. 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 Ms Denyer has not demonstrated any understanding of how her actions impacted the service and the public. The public would also find it unacceptable in light of these circumstances if such a finding were not made. Further, the panel was of the view that any suitably informed member of the public would find Ms Denyer's actions in fabricating records and signatures with the intention of deliberately misleading that a patient had completed them deplorable and extremely concerning.

In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Ms Denyer's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case, Ms Denyer's submissions outlined on the Case Management Form (CMF) and had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel accepted the advice of the legal assessor, who referred it to the NMC Guidance on Sanction and also the cases of in *Bolton v Law Society* [1994] 2 All ER 486,

Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin) and *Lusinga v Nursing And Midwifery Council* [2017] EWHC 1458.

Submissions on sanction

Ms Leathem informed the panel that in the Notice of Hearing, dated 16 March 2023, the NMC had advised Ms Denyer that it would seek the imposition of a striking-off order if the panel found Ms Denyer's fitness to practise currently impaired.

Ms Leathem took the panel through the aggravating and mitigating features of this case, and all the sanctions available to the panel in ascending order. She submitted that a striking off order would be the proportionate sanction in this case. She told the panel that the regulatory concerns raise fundamental questions about Ms Denyer's professionalism. Ms Denyer further submitted that public confidence in the profession and in the NMC as a regulator cannot be maintained if Ms Denyer is not removed from the NMC register.

Ms Leathem submitted that a caution order would not be appropriate as the concerns are not at the lower end of the spectrum and the panel had found a risk of repetition in its decision on impairment. She also submitted that conditions would be difficult to formulate where there was dishonesty, and it simply would not go far enough to address those dishonesty concerns which were found by the panel to be extremely serious. She further submitted (by referring to the SG) that a suspension order would also not be appropriate given that there were attitudinal concerns arising from dishonesty and a risk of repetition.

Ms Leathem submitted that, in light of the panel's decision on misconduct and impairment, Ms Denyer's misconduct breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Ms Leathem referred to the panel the case of *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin) and submitted that courts have supported decisions to strike off healthcare professionals where there is a lack of probity, honesty and trustworthiness,

and that a nurse/midwife found guilty of professional dishonesty who did not attend and satisfy a panel of her insight and remorse forfeited the slim chance of not being struck off.

Finally, Ms Leathem submitted that for all the reasons outlined, and in the light of the finding that Ms Denyer's fitness to practise is currently impaired by reason of her misconduct, she submitted that public confidence would be undermined if a striking off order was not made and that in cases of this kind, the only proportionate sanction is to remove the registrant from the NMC register.

Decision and reasons on sanction

Having found Ms Denyer'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 judgment.

The panel took into account the following aggravating features:

- Patient A suffered direct harm.
- Patient A was in a vulnerable situation at that time.
- Ms Denyer had tried to deflect blame back on to the Patient A.
- Avoidance of disadvantage (concealment of failings).
- Lack of significant insight into failings.

The panel also took into account the following mitigating features:

- There were no regulatory findings regarding Ms Denyer's practice before and after the complaint.

- A BPAS audit carried out when the complaint was received disclosed no significant concerns.
- Positive testimonials provided by midwifery colleagues in respect if Ms Denyer's practice.
- Some indication of remorse.

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 Ms Denyer'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 Ms Denyer'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 order on Ms Denyer'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 easily addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Ms Denyer's registration would not adequately address the seriousness of this case, would not protect the public nor would it 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 determined that although this was a single incident, the conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered midwife. The panel considered its decision in the impairment stage, that Ms Denyer's attempt to deflect blame indicates a failure on her part to take responsibility for her actions and is suggestive of an attitudinal problem.

Ms Denyer has shown very limited insight and has not accepted the impact her actions had on Patient A. The panel has seen no evidence that Ms Denyer has strengthened her practice, to ensure that she will not repeat her misconduct. The panel concluded in its findings on impairment that Ms Denyer had placed Patient A at unwarranted risk of harm. The consequence of Ms Denyer's actions caused Patient A emotional harm and distress. Therefore, the panel could not rule out the risk of repetition.

The panel noted the serious breach of the fundamental tenets of the profession evidenced by Ms Denyer's actions and therefore 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?*

The panel had regard to the paragraph 18 of the case of *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin), where it stated that:

> *18. … A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure."…*

Ms Denyer's actions were significant departures 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 Ms Denyer'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.

The panel also had regard to the NMC guidance on *'serious concerns which are more difficult to put right*' and found that Ms Denyer was responsible for breaching the professional duty of candour to be open and honest when things went wrong including covering up and falsifying records. The panel balanced the aggravating and mitigating features, however, it found that the mitigation was very limited and was far outweighed by the aggravating features.

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 Ms Denyer'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.

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 Ms Denyer's 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 Leathem. She submitted that an interim order is necessary for the protection of the public and is in the public interest. Ms Leathem invited the panel to impose an interim suspension order for the period of 18 months, which would cover the 28-day appeal period and the period of time should Ms Denyer decide to appeal the panel's decision.

Ms Leathem submitted that there is a future risk of repetition should an interim order not be imposed on Ms Denyer's registration. She further submitted that an interim suspension

order is also necessary based on the panel's earlier decision and for the same reasons as the substantive order.

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, nor according to its decision on sanction. The panel therefore imposed an interim suspension order for a period of 18 months, due to the public protection and public interest concerns in this case.

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

That concludes this determination.

This will be confirmed to Ms Denyer in writing.