

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

**Substantive Meeting  
Thursday 10 – Friday 11 August 2023**

Virtual Meeting

**Name of Registrant:** **Julia Opuz**

**NMC PIN** 01B0680E

**Part(s) of the register:** Nursing – Sub Part 1  
Adult Nursing – September 2004

**Relevant Location:** Warrington

**Type of case:** Misconduct

**Panel members:** Simon Banton (Chair, Lay member)  
Shorai Dzirambe (Registrant member)  
Jan Bilton (Lay member)

**Legal Assessor:** Robin Ince

**Hearings Coordinator:** Elena Nicolaou

**Facts proved:** Charges 1 and 2

**Facts not proved:** None

**Fitness to practise:** Impaired

**Sanction:** **Suspension Order (12 months)**

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

## **Decision and reasons on service of Notice of Meeting**

The panel was informed at the start of this meeting that the Notice of Meeting had been sent to Mrs Opuz's registered email address by secure email on 5 July 2023.

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Meeting provided details of the allegation, the time, potential date for the meeting and the fact that this meeting was heard virtually.

In the light of all of the information available, the panel was satisfied that Mrs Opuz has been served with notice of this meeting in accordance with the requirements of Rules 11A and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

## **Details of charge**

That you, a registered nurse:

- 1) On the 3<sup>rd</sup> March 2020 provided an employment reference purporting to be from Manager 1.
- 2) Your actions in charge 1 were dishonest in that:
  - a) You knew Manager 1 was not the author of the reference.
  - b) You sought to mislead Bluestones Medical agency to accept the reference was genuine.

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

## **Background**

Mrs Opuz was employed as a registered nurse by Whittle Hall Nursing Home (the Home). She worked at the Home from January 2019 to January 2020.

Mrs Opuz was due to have a meeting with the manager of the home, Manager 1, in January 2020 due to [PRIVATE] and had been advised in a letter that it may result in disciplinary action. However, the meeting did not take place since Mrs Opuz resigned from her role in December 2019.

Mrs Opuz subsequently applied for a nursing role with Bluestones Medical Nursing Agency (the Agency) on 3 March 2020. It is alleged that as part of that application Mrs Opuz provided an employment reference purporting to be from Manager 1. The reference was undated, on the headed paper of L&M Healthcare (the Home's owners), typed and signed in the name of Manager 1.

The reference stated:

*"It is with great pleasure that I recommend Julia Opuz for the position of a RGN at your company. I can affirm her suitability and credibility to work for Bluestones Medical Agency.*

*Julia is an honest, diligent and hardworking lady, who is passionate about helping others and promoting as much independence for all those in her care, and ensuring that all their care needs are met.*

*Whilst working at Whittle Hall, Julia has displayed immense fervour by providing residents with personalised care and made all residents in her care happy and at ease. Her presence made it a fun and well organised place as she has the ability to display professionalism with a personality that makes her popular and well liked with both the residents and her work colleagues. I believe that she will be a great asset to any organisation that she works for in the future, as her commitment and associated nursing skills are much above par with that of her contemporaries.*

*Here at Whittle Hall, all staff wish Julia the best of luck in her chosen career."*

Manager 1 confirmed in an email to the Agency on the 11 March 2020 that she did not write the reference. Manager 1 also confirmed she would not have given such a positive reference. Mrs Opuz was advised in an email that because of the fraudulent reference her application would not progress any further.

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

In reaching its decisions on the facts, the panel took into account all the documentary evidence in this case together with the representations made by the Nursing and Midwifery Council (NMC).

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 had regard to the written statements of the following witnesses on behalf of the NMC:

- Manager 1 / Witness 1:                   Manager; the Home
  
- Witness 2:                                   Business Manager; the Agency

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the documentary evidence provided by the NMC. It noted that, when considering the issue of dishonesty, as set out in the case of *Ivey v Genting Casinos (UK) Limited t/a Crockfords [2017] UKSC 67*, the panel had to “ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts and then determine whether his conduct was honest or dishonest by the (objective) standards of ordinary decent people.”

Further, the panel noted that Mrs Opuz had not engaged with the NMC and had not submitted any evidence nor had she provided any explanation for her alleged actions.

Accordingly, in reaching its decision, the panel took account of the provisions of *Basson v GMC [2018] EWHC 505 (Admin)* wherein it was stated:

*“However, the state of a person's mind is not something that can be proved by direct observation. It can only be proved by inference or deduction from the surrounding evidence”.*

Finally, notwithstanding Mrs Opuz's lack of engagement, the panel noted that it was to consider whether there were any innocent explanations for her alleged actions.

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

### **Charge 1**

*That you, a registered nurse:*

- 1) *On the 3<sup>rd</sup> March 2020 provided an employment reference purporting to be from Manager 1.*

### **This charge is found proved.**

In reaching this decision, the panel took into account the documentary evidence before it.

The panel considered the witness statement of Manager 1, which stated:

*‘I first heard about the employment reference while I was on annual leave. My deputy manager [Colleague] rang me at home... as she'd just had a call from Bluestones Medical Agency and they wanted to confirm that a reference they had received from [Mrs Opuz] written by me was correct. I told [Colleague] that I haven't given [Mrs Opuz] a reference and as I was on annual leave it [sic] hadn't even looked at my emails. [Colleague] emailed me a copy of the reference. I was shocked as I had not written the reference’.*

The panel considered the statement from Witness 2, which stated:

*'The Bluestones Medical database shows that the registrant applied for a nursing role on the 3 March 2020 and as part of this application she supplied documents including the fraudulent employment reference.'*

The panel also had sight of the reference Mrs Opuz provided to the Agency, which clearly shows Manager 1's name and supposed signature.

The panel first considered whether the NMC has shown, on balance, that Mrs Opuz "provided" the reference from Manager 1. The evidence from Witness 2 confirms that the reference accompanied the application which had been submitted by Mrs Opuz. The panel therefore considered that, absent any suggestion/evidence from Mrs Opuz that another person had submitted the reference, the only plausible and likely conclusion was that Mrs Opuz had caused the reference to accompany the application and therefore had "provided" it.

The panel next considered whether the NMC has shown that, on balance, Mrs Opuz purported that the reference was from Manager 1. The panel considered that, as it had found that Mrs Opuz provided the reference with the application, the inescapable conclusion was that she intended the recipient of the application to conclude that the reference was from Manager 1.

Accordingly, the panel concluded that the NMC has shown, on balance, that Mrs Opuz did provide this reference purporting it to be from Manager 1.

Therefore, in light of the above, the panel found charge 1 proved.

## **Charges 2a and 2b**

*That you, a registered nurse:*

- 2) *Your actions in charge 1 were dishonest in that:*
  - a) *You knew Manager 1 was not the author of the reference.*

b) *You sought to mislead Bluestones Medical agency to accept the reference was genuine*

**These charges are found proved.**

In reaching this decision, the panel took into account the documentary evidence before it.

The panel considered the statement from Witness 2, which clearly stated that Mrs Opuz provided a false reference:

*'The Bluestones Medical database shows that the registrant applied for a nursing role on the 3 March 2020 and as part of this application she supplied documents including the fraudulent employment reference.'*

Manager 1 also sent an email to Witness 2, dated 3 March 2022, which stated:

*'This reference is not from me and I did not send it to you.'*

Manager 1 gave more detail within her statement:

*'The signature on the reference is not my signature either, I always sign everything with my signature and then print my name next to it. [Mrs Opuz] signed the letter herself. I would also have never double spaced on the address. At the Home I was not allowed to write references for people, we were only allowed to tell employers the start and finish date and any disciplinary action. I would never have written a reference like that for anyone. [Mrs Opuz] didn't even ask me to write a reference for her.'*

Manager 1 also stated:

*"...what was written in the reference wasn't true. Julia worked as a nurse and [PRIVATE] also worked at the home as care assistants. I had to manage all of them through [PRIVATE]. Julia gave lots of different reasons why she was [PRIVATE]. I sent Julia a letter detailing that I wanted a meeting with her about [PRIVATE] and that it may result in disciplinary action but she handed in her notice before the*

*meeting. I never heard from her again...I would never have included what was written in the reference for Julia as it doesn't describe her. Julia is not honest, because what she has done is fraudulent. She is not diligent and hardworking because she was [PRIVATE]. She wasn't popular, in fact she was unpopular because she was [PRIVATE] so other people had to pick up her work. She wouldn't have been a good asset as she is [PRIVATE].*

The Agency had sent an email to Mrs Opuz in March 2022, to inform her that her application was cancelled:

*'Unfortunately after speaking with [Manager 1] on Friday and the compliance manager this morning your application has been cancelled*

*[Manager 1] has informed us that the reference you handed in during your interview was not provided by her. It has been taken as a fraudulent reference so we will be unable to complete your application'. [sic]*

The panel first considered whether Mrs Opuz “knew” that Manager 1 was not the author of the reference. It had little hesitation in concluding that the reference was false. It noted the evidence from Manager 1 (which it found to be credible) that, amongst other things: she had not provided the reference; the signature was not her signature; the style of the reference was not hers; and the contents were untrue. The panel also took account of the fact that Mrs Opuz had worked at the Home for just under a year and therefore, more likely than not, had access to the Home’s letterhead, on which the reference had been written. The panel noted that Witness 1 had speculated that [PRIVATE], who had carried on working at the Home following the departure of Mrs Opuz, had stolen the blank letterhead which had been used for the reference. It therefore follows that, if Manager 1 believed that [PRIVATE] could have had access to the Home’s letterhead, then it was more likely that not that Mrs Opuz, who occupied a more senior position, would also have had access to such a document.

Having concluded that the reference was false, the panel reminded itself that it had found that Mrs Opuz had provided it with the application. Accordingly, the panel considered that the overwhelming and obvious conclusion was that Mrs Opuz must have known that



Manager 1 was not the author of the reference. Having come to this initial conclusion, the panel considered whether there was any alternative or innocent explanation which cast doubt upon such a conclusion. However, the panel reminded itself that Mrs Opuz had not put forward any, let alone an innocent, explanation and, furthermore, the panel could not think of one. The panel therefore concluded that the NMC had demonstrated that, on balance, Mrs Opuz “*knew*” that Manager 1 was not the author of the reference.

The panel next considered whether the NMC had demonstrated that, on balance, Mrs Opuz had “*sought to mislead Bluestones Medical agency to accept the reference was genuine*”. The panel first of all considered what Mrs Opuz’s likely motive was in providing a reference that she knew was false in support of her application for employment as a RGN. Once again, the panel considered that the overwhelming and obvious conclusion was that Mrs Opuz, knowing that the reference was false, was seeking to mislead the Agency into giving her a job that, had a proper and genuine reference from the Home been supplied, she would likely not have been offered.

Once again, having come to this initial conclusion, the panel considered whether there was any alternative or innocent explanation which cast doubt upon such a conclusion. However, the panel again reminded itself that Mrs Opuz had not put forward any, let alone an innocent, explanation and, once again, the panel could not think of one. The panel therefore concluded that the NMC had demonstrated that, on balance, Mrs Opuz the NMC had “*sought to mislead Bluestones Medical agency to accept the reference was genuine*”.

Having found that the facts alleged in subparagraphs (a) and (b) were proved, the panel finally went on to consider whether what Mrs Opuz did was honest or dishonest by the objective standards of ordinary decent people. The panel had little hesitation in concluding that ordinary decent people would consider that a nurse, who provided a reference that she knew had not been written by the stated author with the intention of misleading the recipient that the reference was genuine, had acted dishonestly.

The panel consequently considered that, from the evidence above, it is clear that Mrs Opuz was being dishonest in providing a false reference to the Agency. It is clear that she knew Manager 1 was not the author of the reference and sought to mislead and deceive the Agency when applying for a new role.

Therefore, in light of the above, the panel found charges 2a and 2b 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 Mrs Opuz's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

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

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

### **Representations on misconduct and impairment**

In coming to its decision, the panel had regard to the case of *Roylance v GMC (No. 2)* [2000] 1 AC 311 which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

The NMC 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.

The NMC identified the specific, relevant standards where Mrs Opuz's actions amounted to misconduct. The written submissions are as follows:

## 'Misconduct

The comments of Lord Clyde in *Roylance v General Medical Council* [1999] UKPC 16 may provide some assistance when seeking to define misconduct:

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

As may the comments of **Jackson J in *Calheam v GMC* [2007] EWHC 2606 (Admin)** and **Collins J in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin)**, respectively

*'[Misconduct] connotes a serious breach which indicates that the doctor's (nurse's) fitness to practise is impaired'.*

And

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

Where the acts or omissions of a registered nurse are in question, what would be proper in the circumstances (per *Roylance*) can be determined by having reference to the Nursing and Midwifery Council's Code of Conduct.

At the relevant time, Ms Opuz was subject to the provision of **The Code: Professional standards of practice and behaviour for nurses and midwives (2015)** ("the Code") The NMC consider the following provision(s) of the Code have been breached in this case;

**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 conduct under Charge 1 relates to the provision of a reference that was inaccurate. Charges 2 a) and b) relate to Ms Opuz's dishonest intention. The provision of an inaccurate reference, even in the absence dishonest intention, is still serious professional misconduct. This is because it shows no regard for the importance of providing accurate information as part of a job application, If recruiters do not have accurate information about registered professionals, there is a risk that roles are given to those not suitably qualified for them, which has the potential to impact on patient safety and the quality of care provided.*

*In respect of Charges 2 a) and b), by providing an inaccurate reference, Ms Opuz sought to mislead Bluestones Medical agency to accept the reference as genuine aware that [Manager 1] was not author, and that [Manager 1] would likely not have provided such a positive reference given the communications between them about her sickness and potential disciplinary action prior to her resigning.*

*Prioritising people and ensuring you put the interests of people needing nursing services is a standard expected of a registered nurse. Ms Opuz prioritised herself over providing an accurate picture of her employment history and showed no regard for the importance of this.*

*Honesty is integral to the standards expected of a registered nurse and central to the Code. The concern in this case also calls into question the basics of Ms Opuz's professionalism.*

*Ms Opuz's conduct raises fundamental questions about her trustworthiness as a registered professional. It follows that her behaviour risks undermining public confidence and trust in the profession.*

*In line with the NMC guidance entitled "How we determine seriousness" giving*

*a false picture of her employment history is considered an example of serious misconduct which is more difficult to put right.*

*Having regard to these factors it can be said that Ms Opuz's behaviour fell far below the standards expected of a registered professional.'*

The NMC requires the panel to bear in mind its overarching objective to protect 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. The panel has referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin).

The NMC invited the panel to find Mrs Opuz's fitness to practise impaired. The written submissions are as follows:

### **'Impairment**

*The NMC's guidance explains that impairment is not defined in legislation but is a matter for the Fitness to Practise Committee to decide. The question that will help decide whether a professional's fitness to practise is impaired is:*

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

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

*Answering this question involves a consideration of both the nature of the concern and the public interest. In addition to the following submissions the panel is invited to consider carefully the NMC's guidance on impairment.*

*When determining whether the Registrant's fitness to practise is impaired, the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in*

*the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)) are instructive. Those questions were:*

- 1. has [the Registrant] in the past acted and/or is liable in the future to act as so to put a patient or patients at unwarranted risk of harm; and/or*
- 2. has [the Registrant] in the past brought and/or is liable in the future to bring the [nursing] profession into disrepute; and/or*
- 3. has [the Registrant] in the past committed a breach of one of the fundamental tenets of the [nursing] profession and/or is liable to do so in the future and/or*
- 4. has [the Registrant] in the past acted dishonestly and/or is liable to act dishonestly in the future.*

*It is the submission of the NMC that questions 2, 3 and 4 can be answered in the affirmative in this case.*

*The public has the right to expect high standards of registered professionals. Ms Opuz did not expect to receive a good reference from [Manager 1] given their communication prior to her resigning. As a result, Ms Opuz prioritised herself over providing an accurate picture of her employment history rather than risk not being offered a job which would obviously bring financial security. The seriousness of the misconduct is such that it calls into question Ms Opuz's professionalism. This has a negative impact on the reputation of the profession and, accordingly, has brought the profession into disrepute.*

*Fundamental tenets of the nursing profession cover the aspects of behaviour, attitude and approach which underpin the professional standards registered nurses must uphold. These include promoting professionalism and trust. Ms Opuz can be said to have breached this fundamental tenet by the dishonest conduct displayed and the lack of regard for the importance of ensuring accurate information is provided as part of a job application which risks undermining public confidence in the profession.*

*Registered professionals occupy a position of privilege and trust in society and are expected to be professional at all times. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure their conduct at all times justifies both their patients and the public's trust in the profession. Without it, patients and their families risk not putting their care into the hands of professionals and so risk their health and wellbeing.*

*Impairment is a forward thinking exercise which looks at the risk the registrant's practice poses in the future. NMC guidance adopts the approach of Silber J in the case of R (on application of Cohen) v General Medical Council [2008] EWHC 581 (Admin) by asking the questions whether the concern is easily remediable, whether it has in fact been remedied and whether it is highly unlikely to be repeated.*

*The NMC consider Ms Opuz has displayed no insight.*

*The NMC takes this view because Ms Opuz has not engaged in the fitness to practise process or explained why she submitted an inaccurate reference. At local level, Ms Opuz was adamant the reference was genuine.*

*In the absence of insight, Ms Opuz is liable in the future to repeat the dishonest behaviour.*

### **Public interest**

*In Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin) at paragraph 74 Cox J commented that:*

*“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.”*

*Consideration of the public interest therefore requires the Fitness to Practise Committee to decide whether a finding of impairment is needed to uphold proper professional standards and conduct and/or to maintain public confidence in the profession.*

*In upholding proper professional standards and conduct and maintaining public confidence in the profession, the Fitness to Practise Committee will need to consider whether the concern is easy to put right. For example, it might be possible to address clinical errors with suitable training. A concern which hasn't been put right is likely to require a finding of impairment to uphold professional standards and maintain public confidence.*

*However, there are types of concerns that are so serious that, even if the professional addresses the behaviour, a finding of impairment is required either to uphold proper professional standards and conduct or to maintain public confidence in the profession.*

*In line with the NMC's guidance entitled "How we determine seriousness" deliberately giving an inaccurate picture of employment history is a serious concern which is more difficult to put right.*

*The guidance also states the NMC may need to take regulatory action against a nurse because of our objectives to promote and maintain professional standards and the public's trust and confidence in nurses. These types of concerns are categorised as serious concerns based on public confidence and/or professional standards.*

*Ms Opuz' conduct suggests an underlying issue in her attitude based on her lack of regard of the importance of ensuring accurate information is provided as part of a job application. This calls into question the basics of her professionalism and could have a negative impact on public confidence in the profession.*



*As such, the NMC considers there is a public interest in a finding of impairment being made in this case to declare and uphold proper standards of conduct and behaviour’.*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v GMC*, *Ivey v Genting Casinos* and *Basson v GMC*.

### **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 Mrs Opuz’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:

**‘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. It considered all of the documentary evidence before it.

The panel was of the view that Mrs Opuz’s action of providing a falsified reference purporting to be Manager 1 was wholly inappropriate. It has found that Mrs Opuz knew she was being dishonest in doing so, and intended to mislead and deceive the Agency when applying for a new role with them, which was ultimately for her own personal gain. The panel considered these actions to be a significant departure of the standards expected of a registered nurse.

The panel also took account of the NMC Guidance entitled “Considering sanctions for serious cases” (SAN-2) and noted that dishonesty was classed as a serious case. Moreover, where (as the panel has found here) the dishonesty was for personal financial gain and was premeditated, such dishonesty was deemed to be more serious. The panel also notes that “*one off incidents*” are considered to be less serious but, taking all these factors into account, it concludes that Mrs Opuz’s actions fell into the more serious category.

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

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

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

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

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

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

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

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

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

The panel considered that all four limbs of Grant are engaged in this case.

The panel finds that patients could have been put at risk as a result of Mrs Opuz's misconduct and dishonest actions, as she provided a falsified reference when applying for a new role, and there could have been significant consequences should a person who is not as qualified for the role as her reference suggests she is, be mistakenly recruited for a role that involves caring for patients.

The panel finds that Mrs Opuz's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was also satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that there is no evidence before it that indicates Mrs Opuz has demonstrated insight, remorse or reflection into her actions, nor has she addressed why she undertook these actions in the first place. It noted that Mrs Opuz has not engaged with the NMC's proceedings. The panel reminded itself that it is difficult to address dishonest actions in any case, but there is no evidence before it that Mrs Opuz has even made attempts to do so. It also noted that Mrs Opuz undertook this action as a means for personal gain within a new role. Accordingly, in the absence of any evidence of remediation or reflection, the panel concluded that there remains a significant risk of repetition.

In light of the above, the panel was therefore of the view that a potential risk of harm and a risk of repetition remains in the absence of any evidence from Mrs Opuz. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection, albeit it considered the risk of harm to be on the lower end of the scale.

The panel bore in mind 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 as a well-informed member of the public would be shocked to learn of Mrs Opuz's actions. The panel agreed that the grounds of public interest was most prevalent in this case.

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 Mrs Opuz's fitness to practise impaired on the grounds of public interest.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a suspension order for a period of 12 months. The effect of this order is that the NMC register will show that Mrs Opuz's registration has been suspended.

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.

### **Representations on sanction**

The panel noted that in the Notice of Meeting, dated 5 July 2023, the NMC had advised Mrs Opuz that it would seek the imposition of a 12-month suspension order if it found her fitness to practise currently impaired.

The NMC's written submissions are as follows:

#### **'Sanction**

*We consider the following sanction is proportionate*

*Suspension Order for a period of 12 months with a review*

*With regard to our sanctions guidance the following aspects have led us to this conclusion:*

*The aggravating factors in this case included.*

- *Lack of insight into her conduct.*

*No mitigating factors have been identified at this time.*

*Taking the least serious sanctions first, it is submitted that taking no action and a caution order would not be appropriate in this case. The NMC Sanctions Guidance*

*states the discretion to take no further action will be used only in rare cases and that that a caution order may be appropriate where the 'case is at the lower end of the spectrum of impaired fitness to practice and the panel wishes to mark that the behaviour was unacceptable and must not happen again'*

*Ms Opuz has presented a misleading picture of her work history to deceive her potential employer. This is entirely dishonest and goes against a fundamental tenet of the profession namely to act with honesty and integrity at all times. Further, she has not shown any insight into her conduct. In those circumstances the seriousness of case means either sanction would not be appropriate.*

*The case does not involve Ms Opuz's clinical practice meaning there is no risk to the public or patients requiring her practice to be restricted (with conditions)*

*The NMC's guidance entitled "How we determine seriousness" suggests that deliberately giving a false picture of employment history is a concern which is so serious and more difficult to put right. To date Ms Opuz has not provided any explanation or insight to her behaviour. The guidance suggests that when concerns of this nature are not put right, they are likely to lead to restrictive regulatory action.*

*However, in carefully considering it was a single incident of dishonesty, it is not so serious that it requires permanent removal from the register. As such a lesser sanction in the form of temporary suspension as opposed to permanent removal is considered proportionate and would achieve the overarching objective of public protection and still ensure public confidence in the profession is maintained.'*

## **Decision and reasons on sanction**

Having found Mrs Opuz'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 decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A lack of engagement with the NMC by Mrs Opuz.
- A lack of insight, reflection and remorse from Mrs Opuz into her actions.

The panel also took into account the following mitigating features:

- No evidence of repetition since the incident occurred.

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 Mrs Opuz'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 Mrs Opuz's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Mrs Opuz's registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The misconduct identified in this case was not something that can be addressed through retraining. Furthermore, the panel concluded that the placing of conditions on Mrs Opuz's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *In cases where the only issue relates to the nurse or midwife's health, there is a risk to patient safety if they were allowed to continue to practise even with conditions; and*
- *In cases where the only issue relates to the nurse or midwife's lack of competence, there is a risk to patient safety if they were allowed to continue to practise even with conditions.*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel considered that this incident was a



single act, Mrs Opuz has since found employment with a new employer, and it appears no issues have been raised since the original incident occurred.

However, the panel was of the view that there are attitudinal concerns present as Mrs Opuz has not engaged with the NMC's proceedings, nor is there any evidence before the panel to suggest that she has demonstrated any insight, remorse or reflection into the seriousness of her actions, and the impact that they could have had on patients, the public and the profession. The panel considered that dishonesty is difficult to address in any event, but there is no evidence from Mrs Opuz to suggest that she has even made any attempts to do so.

The panel was of the view that, despite Mrs Opuz commencing a new employment, the concerns found proved are serious and involve dishonesty. It considered the importance of ensuring that public confidence in the profession and in the NMC as regulator is maintained.

The panel did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, the panel concluded that it would be disproportionate at this stage. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in Mrs Opuz's case to impose a striking-off order.

Balancing all of these factors the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

The panel noted the hardship such an order will inevitably cause Mrs Opuz. However, this is outweighed by the public interest in this case.

The panel considered that this order is 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.

The panel determined that a suspension order for a period of 12 months with a review was appropriate in this case to mark the seriousness of the misconduct.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Mrs Opuz's engagement with the NMC's proceedings and her attendance at the review hearing;
- A written reflection by Mrs Opuz that demonstrates her insight, remorse and reflection into her dishonest actions; and
- Testimonials, whether from paid or unpaid work.

This will be confirmed to Mrs Opuz in writing.

### **Interim order**

As the suspension 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 Mrs Opuz's own interests until the suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

### **Representations on interim order**

The panel took account of the written submissions made by the NMC:

*'If a finding is made that Ms Opuz's fitness to practise is impaired, and a restrictive sanction is imposed, we consider an 18 month interim order should be imposed for the same reasons on the basis that it is necessary for the protection of the public and / or otherwise in the public interest. If the panel imposes a conditions of practice order an interim conditions of practice order is appropriate alternatively if a*

*suspension order is imposed, an interim suspension order is appropriate. This is because any sanction imposed by the panel would not come into immediate effect but only after the expiry of 28 days beginning with the date on which the notice of the order is to Ms Opuz or after any appeal is resolved. An interim order of 18 months is necessary to cover any possible appeal period.'*

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

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period.

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

That concludes this determination.