

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

**Substantive Hearing
Monday, 18 December 2023 – Thursday, 21 December 2023**

Virtual Hearing

Name of Registrant:	Richard Osman Adam
NMC PIN	20D0275E
Part(s) of the register:	Registered Nurse – Adult RNA – 8 March 2021
Relevant Location:	Greenwich
Type of case:	Misconduct
Panel members:	Dr Katharine Martyn (Chair, Registrant member) Manjit Darby (Registrant member) Clare Taggart (Lay member)
Legal Assessor:	Graeme Henderson
Hearings Coordinator:	Hamizah Sukiman
Nursing and Midwifery Council:	Represented by Assad Badruddin, Case Presenter
Mr Adam:	Present and unrepresented
Facts proved:	Charges 1, 2 and 3
Facts not proved:	None
Fitness to practise:	Impaired
Sanction:	Striking off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Badruddin, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of charge 1.

The proposed amendment was to correct a typographical error that referred to Condition 11 as opposed to the correct condition, which is Condition 9. He informed the panel that, when the NMC finalised the charges, the NMC referred to the last set of conditions as opposed to the conditions which were in force at the time. He submitted that the condition remains the same and this amendment would not change the nature of the charge. It was submitted by Mr Badruddin that the proposed amendment would provide clarity and more accurately reflect the evidence.

“That you, a registered nurse:

- 1) On an unknown date when applying for the role of a Band 5 Staff Nurse breached your interim conditions of practice order by failing to inform your prospective employer that you were subject to Interim Conditions of Practice Order in accordance with condition 11.”

The proposed amendment is as follows:

“That you, a registered nurse:

- 1) On an unknown date when applying for the role of a Band 5 Staff Nurse breached your interim conditions of practice order by failing to inform your prospective employer that you were subject to Interim Conditions of Practice Order in accordance with ~~condition 11~~ **condition 9.**”

You indicated to the panel that you support the application.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to correct the typographical error and ensure that it more accurately reflects the evidence.

Details of charge (as amended)

That you, a registered nurse:

- 1) On an unknown date when applying for the role of a Band 5 Staff Nurse breached your interim conditions of practice order by failing to inform your prospective employer that you were subject to Interim Conditions of Practice Order in accordance with condition 9.
- 2) When interviewing for the role of Band 5 Staff Nurse on 3 May 2022, having previously not informed your prospective employer that you were subject to an Interim Conditions of Practice Order, failed to inform your employer that you were subject to this.
- 3) Your conduct at charge 1 and 2 was dishonest in that you intended to mislead your prospective employer by failing to disclose your interim conditions of practice order.

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

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

Mr Badruddin made a request that this case be held partially in private as *[PRIVATE]*. The application was made pursuant to Rule 19 of the Rules.

You indicated that you supported the application.

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

The panel determined it would enter into private session as and when matters surrounding *[PRIVATE]* are raised.

Background

The charges arose whilst you were applying for a Band 5 registered nurse role at Lewisham and Greenwich NHS Trust (the Trust). You were referred to the NMC on 23 December 2022.

You were made subject to an interim conditions of practice order on 6 September 2021. The order was reviewed on 8 December 2021, and it was reviewed again on 8 February 2022. The interim order, which applied at the time of the application process, contained condition 9 which stated:

'You must immediately give a copy of these conditions to:

- a) Any organisation or person you work for.*
- b) Any employers you apply to for work (at the time of application).*
- c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study...'*

You applied for a role as a registered nurse at the Trust by submitting an application form on 25 February 2022. As part of the application process, you were interviewed

for this role on 3 May 2022. It is alleged you did not disclose you were subject to an interim conditions of practice order in the application form or during your interview.

It was subsequently discovered during pre-employment checks that the interim conditions of practice order was in place. It is the NMC's case that Witness 1 became aware when notified by ESR Workforce administrator on 11 July 2022, when you were due to commence an induction week. Witness 1 met with you regarding this on 21 July 2022, when you introduced yourself to Witness 1, and an action plan with support was identified.

It is the NMC's case that Witness 1 escalated the matter to Witness 2 and another member of staff following Witness 1's return to work, on 3 September 2022. Witness 2 approached you, on 14 September 2022, to request a copy of the interim conditions of practice order, and you provided the copy a day after this request.

Decision and reasons on application of no case to answer

Following the closure of the NMC case, you invited the panel to consider an application from you that there is no case to answer in respect of all the charges. This application was made under Rule 24(7).

In relation to this application, you submitted that you have not done anything wrong on the application form, as you were not asked to disclose your interim conditions in any of the questions. You informed the panel that you were told to give a copy of the interim conditions to your employer when you started work, which you attempted to do on your first day. You submitted that Witness 1 declined to accept the copy of the interim order, and she told you she has seen it online and consequently was setting up an action plan for you. You submitted that, because Witness 1 refused, you could not force her to take the copy. With regard to Witness 2, who spoke to you about the matter in September 2022, you informed the panel that Witness 2 told you to return to your ward and assured you that you would be supported.

With regard to the application form, you submitted that you completed the form to the best of your knowledge, and you believed the questions within the application form

reflect the things that the Trust finds important. You told the panel that you have learnt from this, and if you had emailed your case officer at the time, this could have been avoided. You informed the panel that, in your opinion, no lives were put at risk, and you will try to comply with future conditions in the best way that you can.

You informed the panel that you applied for the job with a clean heart, and you have not attempted to hide anything, especially knowing the truth would be discovered in pre-employment checks. You submitted that Witness 2 believed your failure to mention your interim conditions at the interview questioned your integrity, but you informed the panel that you have been advised at one of the hearings by the NMC that it was wrong to declare it at the interview process, and it should be declared on the application form instead. You submitted that you completed the application form without the intention to hide anything, and that by way of example, more recently when advised by a later employer to disclose your interim conditions in the 'supporting statement' section of the application, you did so as told.

In these circumstances, you submitted that there was no case to answer.

Mr Badruddin outlined the two-limb legal test pursuant to *R v Galbraith* [1981] 1 WLR 1039. He submitted that there is evidence from two separate members of staff at the Trust who confirmed that you did not disclose the interim conditions of practice order in your application form and at interview. With regard to Charge 1, he further submitted that you have partially accepted that you did not disclose your interim conditions, as there was no question which explicitly asked you of it. He drew the panel's attention to Condition 9, which required you to disclose your interim conditions at the point of application. With regard to Charge 2, he further submitted that you claimed, in your response bundle, that you were advised by the NMC that you were not required to disclose your interim conditions at any interview. He submitted that when you asked Witness 2 about this specific requirement, Witness 2 confirmed she was not aware of such a rule. Mr Badruddin further submitted that, in the determination sent to you from your review hearing, dated 8 February 2022, your representative stated:

'Ms Babalola submitted that there had been a misunderstanding on your part and no intention to deceive any prospective employer. She said that in future, you will ensure that you disclose the interim conditions at the time of making a job application.'

Mr Badruddin submitted that you were fully aware, following your representative's submissions at the review hearing, of your responsibility to disclose to future employers.

In response to your submissions that a question was not explicitly asked regarding conditions on the Trust's application form, Mr Badruddin submitted that the NMC accepts that there was no question specifically addressing any conditions of practice. However, he submitted that the interim conditions of practice do not require a question to be asked, and that you were aware of your obligation to disclose your interim conditions. He drew the panel's attention to the free text box within the 'Person Specification' question in your application form to the Trust, where you could have informed the Trust of your interim conditions. He also drew the panel's attention to the 'Membership of Professional Bodies' section of the application and submitted you could have included information about your interim conditions there. He further submitted that the application form makes clear that applicants should ask for help if they need assistance filling the form.

Mr Badruddin submitted that you knew you had to declare your interim conditions but chose not to. He reminded the panel of Witness 1's statement regarding your body language and shock when you were confronted by her about your interim conditions. When questioned by Witness 1 and 2 as to why he did not provide them with a copy of the conditions, Mr Badruddin submitted that you tried to downplay the seriousness of the concerns against you at the time, and consequently the necessity of the conditions.

He reminded the panel of the two limbs in *Galbraith*, and he submitted that the panel has heard direct evidence from two separate witnesses confirming you should have disclosed your interim conditions and there is clear evidence failure of disclosure at both application stage and interview stage. He submitted that you deliberately

concealed your interim conditions of practice order. He drew the panel's attention to a previous panel's findings on 8 February 2022, which stated:

'... You said it was the onerous conditions which made it difficult for you to obtain employment, as out of 18 applications you received two conditional offers which were revoked once your potential employers became aware of the conditions restricting your practice...'

He further submitted that you had multiple opportunities to disclose your interim conditions to the Trust which were willing to support you, but you chose not to.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

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

The panel refused your no case to answer application.

The panel was of the view that there had been sufficient evidence to support the charges at this stage. The panel considered the two limbs of *Galbraith*, namely there is no evidence to support the charge, or if there is evidence, it is so poor it would be unsafe to find the charges proved. The panel also considered the NMC Guidance on no case to answer (Reference: DMA-6). The panel considered that it has heard live evidence from two witnesses as well as documentary evidence, namely a copy of your interim order, a copy of your application form to the Trust and the determination from your review hearing, dated 8 February 2022. The panel further considered that the witness evidence from both Witness 1 and Witness 2, as well as the documentary evidence provided by the NMC are not weak, vague or inconsistent with other evidence, pursuant to *Galbraith*. The panel also considered that your submissions regarding the no case to answer application do not support a no case to answer finding.

- 1) On an unknown date when applying for the role of a Band 5 Staff Nurse breached your interim conditions of practice order by failing to inform your prospective employer that you were subject to Interim Conditions of Practice Order in accordance with condition 9.

This charge is found proved.

In reaching this decision, the panel considered Condition 9 within the interim conditions of practice order imposed on 8 February 2022. It also considered the application form you submitted to the Trust, witness evidence from Witness 1, the written determination from your review hearing, dated 8 February 2022, as well as your submissions. You did not dispute that you did not disclose that you were subject to an interim conditions of practice order in your application form.

The panel considered your submission that there was no 'box' or section to indicate that you were subject to restrictions. However, the panel concluded that within the application form there were other opportunities for you to include your restrictions, such as in the free text box indicating your professional registration status and the question regarding your suitability for the role. You were able to supply your prospective employer with a full employment history but omitted to mention that you were on interim conditions in that passage.

The panel noted there were also prompts within the form for applicants to contact the employer if they needed help completing the form. You could attach the interim conditions of practice order to the application or email it to the recruitment office. The panel determined you were aware of your obligation to disclose, as Condition 9 makes clear. The panel noted in your written submissions that this was not your first application to work as a registered nurse, and you would have been familiar with the application process. You also had the opportunity to contact your NMC case officer for advice.

A previous panel had set out your responsibilities surrounding disclosure in the review hearing on 8 February 2022, a few weeks prior to your application to the Trust. At this review hearing, you admitted that you had failed to inform some

prospective employers about the interim order. The panel reiterated your responsibility surrounding disclosure and your representative confirmed that, in future, you would inform potential employers about the interim order.

Based on the reasons above, the panel found this charge proved.

Charge 2

- 2) When interviewing for the role of Band 5 Staff Nurse on 3 May 2022, having previously not informed your prospective employer that you were subject to an Interim Conditions of Practice Order, failed to inform your employer that you were subject to this.

This charge is found proved.

In reaching this decision, the panel took into account witness evidence from Witness 1, documentary evidence you provided the NMC as well as your submissions. The panel determined that, having failed to declare that you had an interim order in your application form, the need to declare the order at the interview was especially important. You admitted during questioning by the panel that you did not expressly inform the interviewing panel of your interim order.

The panel also noted that you submitted that you indirectly informed the interviewing panel that everything they needed to know about your registration could be found online. However, the panel did not consider this to amount to a full disclosure of the interim order, as required by Condition 9. Furthermore, your account is contradicted by Witness 1, who said that you did not offer any information about the interim order despite having the opportunity to do so at the end of the interview when you were asked if there was anything else you wanted to add. Furthermore, she only became aware of the interim conditions of practice order after the pre-employment checks had been completed. In addition, Witness 2 said that when she met you in September 2022 to discuss your interim order, you said that you had not disclosed the conditions during your interview because you had not been asked about it.

The Panel considered that you provided two contradictory explanations of what went on during the interview. In the first version of events, you explained that you did not disclose your conditions at interview because you were expressly prohibited from doing so. You said that this understanding was based upon what was said at an earlier interim orders hearing. This version of events contradicts the determinations of the Interim Orders Committees and the interim conditions of practice that you were under at the time of the interview. Therefore, this panel considered that it had been made clear what your obligations under Condition 9 were. This version of events also contradicts your later explanation that you disclosed the existence of the Conditions at the interview – albeit in an oblique manner.

It was your submission that, during the interview, one of the interviewers checked their computer and you were told that measures could be put in place to accommodate you. The panel noted that you did not put this version of events to Witness 1.

The Panel considered both of your versions of events to be inherently unlikely. The Panel considered that you were under a duty to disclose your conditions, at this part of the applications stage, and that you did not do so. Accordingly, it found Charge 2 proved.

Charge 3

- 3) Your conduct at charge 1 and 2 was dishonest in that you intended to mislead your prospective employer by failing to disclose your interim conditions of practice order.

This charge is found proved.

In reaching this decision, the panel took into account the two-limb test pursuant to /vey, as well as the NMC Guidance on dishonesty (Reference: DMA-7). The panel noted that the guidance advises panels to consider what the nurse knew or believed they were doing as well as the background and circumstances surrounding the

event. The panel also considered witness evidence from both Witness 1 and 2, documentary evidence such as the application form, the written determination of the interim order review hearing dated 8 February 2022. The panel also looked at your professional obligations as outlined in the 'The Code: Professional standards of practice and behaviour for nurses and midwives 2018' (the Code).

The panel had to consider whether in respect of each charge proved what your state of mind was and, in light of that state of mind, whether your actions would be considered to be dishonest in the minds of right-thinking people.

With regard to charge 1, the panel began by considering your state of mind. A review hearing was held a few weeks prior to your application to the Trust. At that hearing, the need for you to disclose your interim order to prospective employers was emphasised. This was because you had admitted to having failed to inform some employers about the interim order. You said it was the onerous interim conditions that made it difficult for you to obtain employment. This panel noted that you said that you had sent 18 applications and had two conditional offers rescinded, and that you had recently qualified as a nurse and were relatively inexperienced. At the review hearing, your representative stated that your actions in failing to inform employers were the result of a misunderstanding and that you would comply with the requirement to disclose the interim order in future.

The panel considered your submissions that there was no box for you to tick indicating that you have restrictions against your practice on the application form, but the panel determined that your omission on the application form was not due to this lack of box. The panel determined that it was deliberate, and designed to indicate to prospective employers that you were not subject to any practice restrictions. The panel did not consider your belief that the lack of a disclosure box in the application form absolved you of your disclosure responsibilities, pursuant to condition 9, was a reasonably held belief in light of the review hearing dated 8 February 2022. The panel also considered your submissions that you did not read the small print at the start of the application form, but it concluded that this does not discharge your disclosure obligations. The panel noted that you ticked 'yes' to the declaration at the end of the application form, which confirms that your application is true and

complete. The panel was of the view, given the discussions surrounding your disclosure obligations as outlined in the review hearing on 8 February 2022, you should have been hypervigilant to this requirement when completing your application and you should have sought advice from the NMC when having difficulties to do so.

You submitted that you sought advice from two other nurses, who told you to follow the structure of the application form. You did not name these nurses or call them as witnesses to this substantive hearing. The panel did not believe this explanation, which only arrived during your submissions. However, the panel determined that you were aware of your responsibilities pursuant to condition 9, as the review on 8 February 2022 and previous review hearings predating that make clear. The panel concluded the reason why you completed the application form in the manner that you did was to secure employment, knowing full well that had you disclosed your interim order, it would be more difficult for you to obtain an interview.

The panel were of the view that this state of mind would be considered to be dishonest in the minds of reasonable and honest people.

With regard to charge 2, the panel first considered your state of mind at the time of the interview. The panel accepted Witness 1's evidence that you had ample opportunity to declare your interim conditions at interview stage. The panel also accepted evidence from Witness 2 that there is an expectation that all registrants are honest and open and to share relevant information relevant to their registration at interview. The panel determined that your failure to do so was a continuation of your attempt to paint yourself as an applicant who was not subject to restrictions.

The panel further considered your professional obligations pursuant to the Code, which states:

'23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.2 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body'

In particular, the panel noted the following footnote from the Code:

'When telling your employers, this includes telling (i) any person, body or organisation you are employed by, or intend to be employed by, as a nurse, midwife or nursing associate; and (ii) any person, body or organisation with whom you have an arrangement to provide services as a nurse, midwife or nursing associate.'

The panel determined that the Code makes clear that all registrants must be aware and mindful of their disclosure obligations. This panel also determined that this has been made explicit by the reviewing panel in their determination on 8 February 2022. The onus to disclose your interim order rested on you, as set out in the review hearing dated 8 February 2022 and as outlined with your professional responsibilities under the Code.

The panel concluded that you chose not to reveal the existence of your interim order at the interview and this decision would be regarded as dishonest in the minds of reasonable and honest people.

Furthermore, the panel concluded that there are no other credible explanations for your actions with respect to both Charge 1 and Charge 2 that leave the panel to conclude that you acted honestly. The panel noted your submission that you attempted to provide a copy of your interim order to Witness 1 but she refused to accept it, and that this discharged your disclosure obligations. However, the panel concluded that your disclosure duty commenced at the point of application and carried throughout the interview process. The panel did not accept that you attempted to provide Witness 1 with a copy of your interim order on that day. This

was corroborated by Witness 2, who said that you continued to delay providing the Trust with your interim conditions until 15 September 2022.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired.

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

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

Submissions on misconduct

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

Mr Badruddin invited the panel to take the view that the facts found proved amount to misconduct. He identified the specific, relevant standards where your actions amounted to misconduct. He drew the panel's attention to a number of sections of the Code that he said had been breached.

He submitted that the panel has found that you concealed your interim conditions of practice order from the Trust, when they were your prospective employer, in an attempt to mislead them during the application process. He submitted that failure to disclose your interim conditions on an application form, after you had been given explicit guidance to do so by another reviewing panel weeks before falls below the

expected standards of a registered nurse. He further submitted that deliberately continuing to omit that information at interview compounds the misconduct.

You reiterated to the panel that you had no intention of disrespecting the panel. You told the panel that you attended the review hearing on 8 February 2022 with a representative and that you were told that you should not declare your interim order at an interview. You submitted that nobody informed you that you were falling short of the standards expected of you and you said you got confused.

You told the panel that you did attempt to give a copy of the interim order to Witness 1 on your first day, but she declined. You submitted that, in future, you will email your case officer if this happens. You submitted that you had no intention of deceiving the NMC.

You submitted that you understand the four rules surrounding good practice in the Code, namely to prioritise people, practise effectively, preserve safety and promote professionalism and trust. You submitted that you had no intention of putting patients or colleagues at risk. You informed the panel that, following an assault, you experienced a hostile working environment at the Trust, and you resigned. After your resignation, the Trust referred you to the NMC.

You told the panel that you had no intention of deceiving the employer and was brought up to be honest in everything you did.

Submissions on impairment

Mr Badruddin 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).

Mr Badruddin submitted that all four limbs of *Grant* are engaged. He submitted that the interim conditions were in place for the protection of the public given the concerns surrounding your clinical practice at the time. He submitted that you attempted to bypass the regulatory concerns and had a disregard to the regulatory interventions put in place to prevent any direct risk to patients. He submitted that, but for the Trust conducting their own pre-employment checks, you would have continued to present yourself as a nurse who did not have restrictions on their practice.

Mr Badruddin further submitted that if members of the public were aware of your regulatory disregard, it would deter them from accessing medical care. He submitted that honesty and integrity are fundamental tenets of nursing, and the panel has concluded that you acted dishonestly.

He invited the panel to find impairment on both public protection and public interest grounds. He submitted that dishonesty is difficult to remediate. He further submitted that you have shown no insight into the seriousness of the concerns against you. He drew the panel's attention to evidence from Witness 1, who told the panel that even when your interim conditions were discovered, you attempted to downplay the matters that led to the interim conditions being imposed. He submitted that this leads to a risk of repetition, as you have attempted to deflect the responsibility for your actions onto the Trust, the application form and upon the NMC.

Mr Badruddin submitted that you demonstrate limited remorse, as you do not consider your omissions amounted to a breach of your interim order. He further

submitted that you have not shown evidence of training or produced a reflective piece that addresses the regulatory concerns that have arisen out of the initial referral without admitting to these sets of facts, which you could have done.

You submitted that you have reflected upon your actions. You told the panel that when you completed the application form for a later employer, you sought advice from the HR lead as to how to include your interim conditions of practice and you were truthful about the restrictions on your practice. You submitted that, at the time of your application to the Trust, you did not know that you could disclose your interim order on the application form.

The panel accepted the advice of the legal assessor which included reference to the judgements in *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, the aforementioned case of *Grant, Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *GMC v Awan* [2020] EWHC 1553 (Admin).

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. The panel also had regard to the NMC's guidance on misconduct (Reference: FTP-2a) and the guidance on seriousness, with particular regard to dishonesty (Reference: FTP-3c). The panel also bore in mind the context in which these charges arose, pursuant to the guidance.

The panel considered the 'Introduction' section of the Code, which outlined:

'The values and principles set out in the Code can be applied in a range of different practice settings, but they are not negotiable or discretionary.'

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

'8 Work co-operatively

To achieve this, you must:

8.6 share information to identify and reduce risk.

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care 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

23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body.'

With regard to Code 20.2, the panel had particular regard to your obligation to '*act with honesty and integrity at all times*'.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel determined that you have failed to be open and transparent about your interim order in both the application form and the interview.

The panel noted the seriousness with regard to breaches of interim orders.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel determined that honesty is a fundamental tenet of nursing, and your dishonest conduct was deliberate and occurred over the totality of the application process. The panel considered that you have been reminded by a previous panel of your professional obligations to disclose your interim order, on 8 February 2022, and you were given guidance on information you needed to disclose at the application stage. Despite this, you omitted the information in your application, on 25 February 2022, to the Trust.

The panel noted that there has been no suggestion that you have harmed any patients by way of your misconduct. However, the panel determined that the interim conditions of practice order was imposed as there was a risk of harm to patients. The panel considered that you have not acknowledged the reasons for the interim conditions of practice order being in place and the risks your misconduct posed to patients, and its seriousness.

For the reasons above, the panel concluded that your actions amounted to misconduct.

Decision and reasons on impairment

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

The Panel were aware that there is no statutory guidance on what constitutes impairment. However, it was guided by NMC Guidance and the leading Case of *Grant*.

In coming to its decision, the panel had regard to the NMC Guidance on Impairment (Reference: DMA-1) in the Fitness to Practise Library, updated on 27 March 2023, which states:

‘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.’

The panel determined that the most relevant elements of the guidance in this case concern practising safely and professionally. With regard to practising safely, the panel determined that your willingness to disregard an interim order imposed for the protection of the public indicates an inability to practise safely, and to take steps to remediate the regulatory concerns. With regard to practising professionally, the panel determined that dishonesty is fundamentally unprofessional, and your inability to accept full responsibility for your actions as well as your attempts to deflect blame on other people indicate you show lack of insight as to your own role in your misconduct. The panel concluded that there is a real risk of you repeating your misconduct, in light of your limited insight.

In paragraph 76 of *CHRE v NMC and Grant*, 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.'*

With regard to the first limb, the panel determined that patients were put at risk of harm as a result of your misconduct, as the interim conditions of practice order was imposed as a result of concerns surrounding your clinical practice.

With regard to the second and third limbs, your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel determined that it is a fundamental tenet of nursing for a registrant to be open and honest, and to act with integrity. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find your misconduct was a breach of a fundamental tenet of the profession.

With regard to the fourth limb, the panel had found that you were dishonest and had attempted to deflect your responsibility.

The panel also considered the context from which the charges arose, pursuant to the guidance. The panel noted your submissions on the difficulty in securing a job as a result of the interim conditions. You were given a clear warning by the reviewing panel of 8 February 2022 that you had to disclose the existence of interim conditions to any potential employer. The panel concluded that you chose to ignore that warning out of your own volition. As a result, the panel is not satisfied that the conduct would not be repeated.

The panel considered remediation and guidance on whether the concerns could be addressed (Reference: FTP-13a). The panel determined that elements of dishonesty in this particular case are difficult to remediate. The panel noted your apologies to the NMC as your regulator, and your assertion that you have learnt from your mistake and that in future, you will be honest, as if you are not honest you will be

found out as the interim order is linked to your name and registration PIN. The panel further noted that you gave the previous reviewing panel, on 8 February 2022, the same assurance a few weeks before you breached these conditions.

The panel had nothing before it to indicate that you have sought to demonstrate learning, either through further training or reflection. The panel was also of the view that you had not used the opportunity to learn and demonstrate compliance after being given clear and unequivocal direction by a previous reviewing panel on 8 February 2022.

Regarding insight, the panel considered the NMC guidance on insight (Reference: FTP-13b). The panel determined that you have not accepted personal responsibility for your misconduct. You have continued to deflect responsibility and to blame others throughout the hearing. The panel were of the view that you demonstrated very limited insight. The panel noted that, since the charges arose, you claim to have sought advice from colleagues and have included your interim order within your application form. The panel noted that you say you now understand you must include your interim order in your application form. Despite this, the panel is of the view that this action alone did not demonstrate that you have reflected upon the charges, learnt from your mistakes and developed an understanding of what you did wrong, which was to breach your interim order. The panel further considered that whilst you are sorry to have found yourself in this situation, you have not demonstrated remorse with regard to the impact of your misconduct on patients, colleagues or the confidence of the wider public.

Consequently, the panel is of the view that there is a risk of repetition based on the lack of insight you demonstrate as well as the lack of remediation. 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. The panel concluded that a well-informed member of the public would be very concerned if a finding of impairment was not made, in light of your dishonesty, especially as it involved a breach of an NMC interim order, put in place to protect the public. 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 your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your 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 you off the register. The effect of this order is that the NMC register will show that you have been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Badruddin informed the panel that the NMC seeks the imposition of a striking off order if your fitness to practise was found currently impaired.

He invited the panel to consider the SG and reminded the panel that the purpose of sanctions is not to be punitive but to protect the public and uphold the public interest. He submitted that a striking off order is proportionate and fair and adequately addresses the public protection and the public interest concerns in this case.

He submitted that the aggravating factors for this case include:

- There was direct and deliberate breach of regulatory intervention;
- There was a disregard for patient safety and the requirements of the regulator;
- This was calculated dishonesty as the failure disclose a copy of your interim conditions continued for a period of time, namely from March to September 2022;
- You have attempted to minimise the misconduct by deflecting responsibility onto others;
- There are clear deep-seated behavioural and attitudinal problem prevalent throughout your conduct;

- You have only demonstrated a limited level of insight, remorse or remediation into the misconduct or its consequences on patients, colleagues and the wider reputation of the nursing profession.

Mr Badruddin submitted that, with regard to mitigating factors, you have engaged with the NMC throughout the process, and you did initially accept you did not provide your interim order as you did not have the opportunity to do so in the application form.

He submitted that it would be wholly inappropriate for the panel to impose no order, given the seriousness of the registrant's misconduct and as the panel have found that the concerns have not been fully remediated. He submitted that taking no action would not adequately address the public protection and public interest concerns.

He further submitted that a caution order is not suitable as it only addresses conduct at the lower end of the spectrum and the seriousness of these allegations does not fall within that category.

Mr Badruddin submitted that a conditions of practice order would not be appropriate when looking at the regulatory concerns in this case. He submitted that whilst the original concerns related to clinical practice, the regulatory concerns before this panel concern your dishonestly through you breaching your regulatory restrictions, rather than the initial clinical concerns. He submitted that it would not be possible to formulate conditions which could be considered workable, measurable or proportionate to address the concerns in this case as it as conditions cannot address the attitudinal concerns and your lack of remediation or dishonesty.

Mr Badruddin then invited the panel to consider the guidance on imposing a suspension order (Reference SAN-3d). He submitted there are some applicable factors, including the seriousness of this case by all factors does at the very least warrant a temporary removal from the register. However, he submitted that your conduct was a significant departure from the standards expected of a registered nurse and would not be adequately addressed by a suspension order. He submitted that, due to the nature of the concerns, this is not a case of a single instance of

misconduct. He further submitted that this is a pattern of dishonest behaviour demonstrated over a period of months.

Mr Badruddin submitted that there is clear evidence of harmful deep-seated personality and attitudinal problems when it comes to accepting the conduct behind the concerns. He further submitted that, although there has not been a repetition of the behaviour since this incident, the risk of repetition has already been identified by the panel in its determination on impairment.

Consequently, Mr Badruddin submitted that a period of suspension would not adequately address the public protection and public interest factors stemming from this case.

Mr Badruddin drew the panel's attention to the NMC's guidance reference on seriousness when determining the imposition of a striking-off order (Reference: SAN-2). The guidance stated:

'Honesty is of central importance to a nurse's practice. Therefore, allegations of dishonesty will always be serious and a nurse has acted dishonestly will always be at some risk of being removed from the register.'

He further submitted that the following factors are applicable to this case:

- Deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients.
- Direct risk to patients
- Premeditated systematic or longstanding deception.

He submitted that your actions of deliberately and dishonestly breaching regulatory intervention in the form of an interim conditions of practice order in his submissions raises fundamental concerns around your professionalism and trustworthiness. He further submitted that your failure to accept or address the concerns raise a significant risk of repetition and consequently would be incompatible with continued

registration. He further submitted there would be damage to public confidence in nurses and midwives if you were allowed to continue and it could deter patients from accessing healthcare.

He invited the panel to strike you off the NMC register.

You asked the panel to support you and assess all the sanctions available before it. You submitted that the panel should consider the impact on you of a striking-off order. You told the panel that you had no intention of putting the public at risk or do anything to tarnish the image of the nursing profession.

You further told the panel that you were honest about not disclosing your interim order when you appeared before the previous reviewing panel on 8 February 2022. You said to this panel that if you had anything to hide, you would not have said anything to that panel.

You asked the panel to use their discretion to find another alternative sanction which could support you and allow you to remain on the NMC register.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG, with particular regard to SAN-1 and SAN-2 on dishonesty and breaches of an interim order. The decision on sanction is a matter for the panel independently exercising its own judgement. In reaching this decision, the panel considered proportionality and took into account the overarching objective behind the imposition of a sanction. It also took into account available aggravating and mitigating factors in this case, the seriousness of the regulatory concerns and the context from which the concerns arose.

The panel determined the following features were aggravating:

- You were subject to an interim conditions of practice order, that you deliberately breached;
- This interim conditions of practice order was imposed to protect patients from a risk of harm, and consequently, the breach placed patients at a risk of harm;
- This breach took place shortly after you had received clarification on the necessity of the disclosure of your interim order from the NMC during a review hearing;
- Lack of insight into failings, including the potential impact of your actions on patient safety and public confidence in the profession, as well as lack of understanding and accepting of wrongdoing; and
- This deliberate breach was an act of dishonesty.

The panel considered Mr Badruddin's submissions on potential mitigating factors, but it concluded that no relevant factors were present in this case.

With regard to seriousness, the panel considered the relevant guidance on seriousness (Reference: FTP-3b). It determined that your misconduct had the potential to cause direct harm to patients. The panel also determined that the breach was premeditated, in an attempt to gain employment. Your refusal to admit the facts demonstrate a significant lack of insight and awareness of the impact of your misconduct on patients and colleagues, which the panel found contributed to the seriousness of the concerns. The panel further considered that the interim conditions were placed upon your registration to protect the public, and you demonstrated a disregard for the steps the NMC has taken to protect the public through breaching the interim order. It noted that the review panel that put the order in place on 8 February 2022 did so because of concerns about '*serious shortfalls in your competency over a wide-range of nursing skills.*'

The panel considered the guidance and noted that allegations involving dishonesty will always be serious. The panel further noted that not all acts of dishonesty carry the same weight. However, in this particular case, the panel considered that it could not be regarded as a one-off or opportunistic incident. The panel concluded that the

misconduct was deliberate and was for a personal gain, namely to gain employment from the Trust. The panel also considered that, having failed to disclose your interim order in both the application form and at interview, you delayed the disclosure after you were employed by the Trust. Taken altogether, the panel concluded that your misconduct carries a high level of seriousness.

With regard to the context from which the concerns arose, the panel noted that you alleged the Trust created a hostile working environment for you following an alleged assault incident. However, the panel concluded that the concerns that led to this hearing predated the period in which you were working for the Trust in what you described to the panel as a hostile working environment. The panel determined that, at the time of the incident, you had no contextual reason to act dishonestly.

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

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the charges involve dishonesty, for which no condition can be formulated. Furthermore, the panel was not satisfied that you would comply with your conditions, in light of your breach of your interim conditions of practice order.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG sets out some of the circumstances in which a suspension order may be appropriate, which includes:

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

The panel considered that you have displayed deep-seated personality or attitudinal problems. The panel considered that you received explicit guidance from a previous reviewing panel on 8 February 2022 on how to properly comply with your interim order, and you chose not to a few weeks later. The panel considered that you have not demonstrated insight and you pose a significant risk of repeating your misconduct.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

The panel considered that whilst a suspension order may sufficiently protect the public for the duration of the sanction, but for the reasons outlined above, the panel concluded that a suspension order would not be a sufficient, appropriate or proportionate sanction for this case.

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?*

With regard to professionalism, the panel concluded that your misconduct does raise fundamental questions about your honesty and integrity. The panel was of the view that the findings in this case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel considered whether a striking off order is the only sufficient sanction. The panel concluded that, whilst a suspension order may protect the public for the time in which it is in force, the seriousness of the concerns and the nature of the misconduct indicate that it is the only sanction available which allows for the maintenance of professional standards and upholding public confidence in the profession and its regulator. The panel considered that you were given guidance and an opportunity by the previous reviewing panel on 8 February 2022 to correct your understanding of your disclosure obligations, and you chose not to.

Consequently, your actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with you remaining on the register.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to you in writing.

Interim order

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

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

Submissions on interim order

Mr Badruddin submitted that, considering the panel's decision on sanction, the panel should impose an interim suspension order for a period of 18 months to account for the 28-day appeal period before the striking-off sanction takes effect. He submitted that the regulatory concerns are serious, and consequently an interim suspension order should be imposed on both public protection and public interest grounds. He submitted that this mirrors the striking-off sanction in which the panel has imposed.

You did not offer any submissions.

Decision and reasons on interim order

The panel considered the guidance on interim orders (Reference: INT-1). 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 suspension order is consistent with its finding on sanction.

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

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

That concludes this determination.