

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

**Substantive Hearing  
Wednesday, 5 July 2023 – Friday, 7 July 2023  
Monday, 10 July 2023 – Wednesday, 12 July 2023**

Virtual Hearing

**Name of Registrant:** **Tsungirirai Chagwedera**

**NMC PIN** 16B0048E

**Part(s) of the register:** Registered Nurse – Sub part 1  
Mental Health Nursing – 4 March 2016

**Relevant Location:** Birmingham

**Type of case:** Misconduct

**Panel members:** John Penhale (Chair, Lay member)  
Manjit Darby (Registrant member)  
Nicola Hartley (Lay member)

**Legal Assessor:** John Donnelly (5 July-7 July 2023)  
Nigel Pascoe KC (10 July – 12 July 2023)

**Hearings Coordinator:** Stanley Udealor

**Nursing and Midwifery Council:** Represented by Rebecca Butler, Case Presenter

**Miss Chagwedera:** Not present and not represented at the hearing

**Facts proved:** Charges 1, 2a, 3, 4a, 5a, 5b, 6, 7, 8

**Facts not proved:** Charges 2b, 4b

**Fitness to practise:** Impaired

**Sanction:** **Striking-off order**

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

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

The panel was informed at the start of this hearing that Miss Chagwedera was not in attendance and that the Notice of Hearing letter had been sent to Miss Chagwedera's registered email address by secure email on 25 May 2023.

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

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, date and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Miss Chagwedera's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

## **Decision and reasons on proceeding in the absence of Miss Chagwedera**

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

Ms Butler drew the panel's attention to the email from Miss Chagwedera to the NMC, dated 5 June 2023, which stated:

*'...I'm happy for hearing to go on without me ....'*

Ms Butler submitted that it has been confirmed by Miss Chagwedera that she will not be attending the substantive hearing, nor will she be represented. She submitted that although Miss Chagwedera is actively engaging with the NMC, she has voluntarily absented herself from today's hearing and has not requested an adjournment of this matter. Ms Butler submitted that there is a strong public interest in the expeditious disposal of the case as the charges relate to events that occurred in 2020. She further submitted that it was fair for the hearing to proceed in the absence of Miss Chagwedera.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and *GMC v Adeogba* [2016] EWCA Civ 162

The panel has decided to proceed in the absence of Miss Chagwedera. In reaching this decision, the panel has considered the submissions of Ms Butler, the email from Miss Chagwedera dated 5 June 2023, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- Miss Chagwedera has indicated in her email dated 5 June 2023, that she is aware of today's hearing and is content for the hearing to proceed in her absence;
- Miss Chagwedera has voluntarily absented herself;
- No application for an adjournment has been made by Miss Chagwedera;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Four witnesses are scheduled to give live evidence;

- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2020 and further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Miss Chagwedera in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to her at her registered email address, Miss Chagwedera will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Chagwedera's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

### **Details of charge**

That you, a registered nurse,

1. On a shift 18-19 January 2020, at Swansea Terrace, did not give prebreakfast medications to 14 residents.
2. On a shift 22 January 2020, at Adlington Manor;

- a. Administered or attempted to administer medication to Resident 1 at 0515 when it was due to be administered at 0700 and/or
  - b. Forced or attempted to force medication in to Resident 1's mouth.
3. On a shift 31 January 2020, at Orchard Nursing Home, administered or attempted to administer medication to Resident 2 in darkness and/or without due care and attention.
4. On a shift 31 January 2020, at Orchard Nursing Home,
  - a. Researched how to give medication with a nebuliser on the internet and/or
  - b. Treated Resident 3 with a Nebuliser unsatisfactorily.
5. On a shift on 25 February 2020, at Finch Manor
  - a. Prepared or intended to prepare medications in a toilet and/or
  - b. Asked a Healthcare Assistant how to administer an injection of '*Fragmin*' medication
6. On a shift on 25 February 2020, at Finch Manor, administered an insulin medication injection to Resident 4 before taking the blood pressure of patient
7. On 27 September 2019, having been convicted of one or more offences at Merseyside Magistrates Court, failed to declare the same to the Nursing and Midwifery Council.
8. Your conduct at Charge 7 above was dishonest because you knew that you ought to declare your conviction but did not do so because you wanted to avoid any potential consequences of the declaration.

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

### **Decision and reasons on application to admit hearsay evidence**

The panel heard an application made by Ms Butler under Rule 31 to allow the *Incident Report* dated 27 February 2020 (the Report) and the hearsay statements contained therein, into evidence. She informed the panel that the Report was produced by Mr 1, the liaison officer at Everpresent nursing agency, at the time of the incidents. The Report also contains statements of Ms A who reported the incidents at Finch Manor to Mr 1.

Ms Butler referred the panel to section 1(1) of the Civil Evidence Act 1995 which provides:

**1** *'Admissibility of hearsay evidence.*

**(1)** *In civil proceedings evidence shall not be excluded on the ground that it is hearsay.'*

Ms Butler further referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). She submitted that this case laid out the following factors to be considered in admitting hearsay evidence:

- Whether the statements were the sole and decisive evidence in support of the charges: Ms Butler submitted that the hearsay statements are not the sole evidence that supports charge 5a and 5b as Miss Chagwedera had made full admissions to the charges.
- Whether it was fair to admit the hearsay statements into evidence: Ms Butler submitted that Miss Chagwedera is actively engaging with the NMC and she had voluntarily absented herself from the hearing. She submitted that Miss Chagwedera had been served with the case bundle for this hearing which included the Report and she had not challenged the Report. In contrary, Miss Chagwedera had made full admissions to the charges. Ms Butler submitted that

the Report is relevant to the charges, and it is fair for the Report to be admitted into evidence.

- Whether prior notice had been given that the hearsay statements were to be tendered: Ms Butler submitted that adequate notice had been given to Miss Chagwedera as the NMC had indicated to her in the Case Management Form dated 17 May 2023, that the Report would be relied upon at the hearing.
- Whether there was any suggestion that the hearsay statements were fabricated: Ms Butler submitted that the hearsay statements were made by professionals who were discharging their obligations and there was no reason to suggest that any of the hearsay statements had been fabricated.
- Whether reasonable steps had been taken to secure the attendance of the witnesses: Ms Butler submitted that the incidents occurred in 2020 and the nature of agency work and the care sector rendered it difficult to secure the attendance of Mr 1 and Ms A. She explained that majority of workers in the care sector, work in temporary roles and a significant period of time had passed since the incidents occurred. Ms Butler highlighted that Witness 3 had stated, in her oral evidence, that she had tried on several occasions to obtain a written statement from Ms A, but she was not successful in this regard. Ms Butler submitted that the NMC had also attempted to obtain first-hand evidence from the witnesses of the incidents but had been unsuccessful.

Ms Butler invited the panel to consider the relevance and importance of the hearsay statements in this case, in making its decision and if the panel decides that it is fair to admit the hearsay statements into evidence, it is a matter for the panel to consider on the weight to be attached to the hearsay statements.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far

as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings.

The panel considered the hearsay application.

The panel noted that the Report was prepared in the course of business and in the discharge of professional duties. It took into consideration that Miss Chagwedera had been provided with the Report and she had not challenged it. The panel was of the view that the Report was relevant to charges 5a and 5b and as Miss Chagwedera had made full admissions to charges 5a and 5b, there was no unfairness to her in allowing the Report to be admitted into evidence.

In these circumstances, the panel determined that it was relevant and fair to admit the Report into evidence but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

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

Ms Butler made an application that this case should be held partly in private on the basis that proper exploration of this case involves references to matters relating to Miss Chagwedera's conviction and sentence, which are protected under the Data Protection Act 2018 . The application was made pursuant to Rule 19.

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

The panel determined to hear this hearing partly in private. It will go into private session as and when matters relating to Miss Chagwedera's conviction and sentence are raised.



## **Decision and reasons on application to admit additional documents**

Ms Butler made an application for additional documents to be admitted into evidence. She informed the panel that the documents are the following:

- [PRIVATE]
- [PRIVATE]
- A Screenshot of Miss Chagwedera's registration details on the NMC Register
- The supplementary witness statement of Mr 2

Ms Butler stated that the documents had been sent to Miss Chagwedera and she has been notified by the NMC that the documents would be relied upon in this case. Ms Butler invited the panel to admit the documents into evidence on the basis that they are relevant evidence to support charges 7 and 8.

The panel accepted the advice of the legal assessor.

The panel determined to admit the documents into evidence. It noted that the documents are relevant in this case and [PRIVATE]. The panel decided that there will be no unfairness to Miss Chagwedera, in admitting these documents into evidence.

## **Decision and reasons on application to amend the charge**

The panel heard an application made by Ms Butler to amend the wording of charges 4b and 6.

With regards to charge 4b, Ms Butler submitted that the word '*unsatisfactorily*' does not particularise the charge nor does it adequately encapsulate the incident on 31 January 2020. She informed the panel that the initial charge sent to Miss Chagwedera was '*Tried to administer ampoule nebuliser orally on 31st January 2020*' to which she made her response in the regulatory concerns response form. Ms Butler further explained that there had been several changes to the wordings of charge 4b before its current state.

Ms Butler submitted that the proposed amendment would provide clarity and accurately reflect the incident on 31 January 2020 especially the allegation to which Miss Chagwedera had made her response in the regulatory concerns response form.

#### Original Charge

4. *“On a shift 31 January 2020, at Orchard Nursing Home,*
  - a. *.....*
  - b. *Treated Resident 3 with a Nebuliser unsatisfactorily.”*

#### Proposed amendment:

4. *“On a shift 31 January 2020, at Orchard Nursing Home,*
  - a. *.....*
  - b. *Administered a nebulised medication incorrectly in that you attempted to give it orally and/or subsequently failed to insert the medication ampoule into the nebuliser correctly.”*

In relation to charge 6, Ms Butler stated that the proposed amendment was to replace the words *‘blood pressure’* with *‘blood glucose’*. She submitted that the proposed amendment would not cause prejudice to Miss Chagwedera as the charge was intended to refer to blood glucose. Ms Butler explained that it was a standard nursing practice for a blood monitoring (BM) test to be conducted before the administration of insulin to a patient. This is supported by the statement of Miss Chagwedera in the Local Level Response dated 26 February 2020 in which she stated:

*‘The nurse query was that I’m supposed to take Bm reading first and then give insulin after reading Bm number’*

Ms Butler submitted that the word 'BM' referred to blood monitoring of the glucose level of Resident 4. She submitted that the proposed amendment will therefore not cause prejudice to Miss Chagwedera but accurately reflect the evidence.

Original Charge:

6. *“On a shift on 25 February 2020, at Finch Manor, administered an insulin medication injection to Resident 4 before taking the blood pressure of patient”*

Proposed amendment:

6. *“On a shift on 25 February 2020, at Finch Manor, administered an insulin medication injection to Resident 4 before taking the blood glucose of patient”*

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

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

## **Background**

[PRIVATE]

[PRIVATE]

Miss Chagwedera did not declare any of these convictions to the NMC.

The convictions came to the attention of the NMC during an investigation into a referral made by the Florence agency following a number of complaints made to them about Miss Chagwedera's nursing practice.

On 18 January 2020, Miss Chagwedera worked a night shift at Swansea Terrace where she was tasked to carry out the morning medication round. It was alleged that Miss Chagwedera failed to give pre-breakfast medications to fourteen residents.

It was further alleged that on 22 January 2020, while Miss Chagwedera was working a shift through the Florence agency at Adlington Manor, Resident 1 complained that she had put the light on in her bedroom at 05:15 to give her medication which was not due until 07:00. Resident 1 alleged that Miss Chagwedera that she did not usually take her medication at that time, but Miss Chagwedera told her she may as well take them then as she was awake. It was alleged that Miss Chagwedera tried to force the medication into Resident 1's mouth, which scared her. Miss Chagwedera did not succeed in getting her to take her medication and left the tablets in Resident 1's room for her to take herself.

The incident was referred to the local safeguarding team, who did not take any further action. Miss Chagwedera was not booked to work at Adlington Manor again.

On 31 January 2020, Miss Chagwedera worked a night shift at Orchard Nursing Home. Resident 3 had been prescribed medication to be administered via a nebuliser. It was alleged that during Miss Chagwedera's medication round, she gave Resident 3 the ampoule intended for the nebuliser and told him to swallow it. Resident 3 alleged that he told Miss Chagwedera that the medication was not to be swallowed but administered via a nebuliser.

After Resident 3 had told Miss Chagwedera the medication needed to be placed in a nebuliser, it was alleged that she carried out an internet search and watched a YouTube video on '*how to give a nebuliser*'. Miss Chagwedera then administered the medication to Resident 3.

It was alleged that during the same shift, Miss Chagwedera attended to Resident 2 in order to administer his medication whilst the room was dark. She dropped his medications on the bed and spilled his drink all over his face and bed clothes. Resident 2 felt undignified.

Miss Chagwedera was not booked to work at Orchard Nursing Home again.

A further incident occurred on 25 February 2020 when Miss Chagwedera was working a shift at Finch Manor. At that time, Miss Chagwedera had recently commenced employment with another agency, Everpresent Care. It was alleged that during a medication round, Miss Chagwedera went into a toilet with the medication trolley. When challenged by another member of staff, she said that she had needed a moment to clear her head and sort the medication. Further, it was reported that Miss Chagwedera had administered an insulin medication injection to Resident 4 before taking the blood glucose (BM) of the resident. Miss Chagwedera had also asked a Healthcare Assistant on how to administer an injection of '*Fragmin*' medication.

Following an investigatory meeting on 26 February 2020, Miss Chagwedera was dismissed from Everpresent Care.

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

At the outset of the hearing, the panel heard from Ms Butler, who informed the panel that Ms Chagwedera made full admissions to charges 1, 2a, 4a, 4b, 5a, 5b, 6 and 7. The panel therefore finds charges 1, 2a, 4a, 5a, 5b and 6 proved in their entirety, by way of Miss Chagwedera's admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Butler and Miss Chagwedera's Registrant Response Bundle.

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

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

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

- Witness 1: Home manager at Swansea Terrace at the time of the incidents.
- Witness 2: Social care assessor at Cheshire East.
- Witness 3: Managing Director at Everpresent Nursing Agency.
- Witness 4: Registered Manager at Orchard Nursing Home at the time of the incidents.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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

**Charge 2b**

2. *On a shift 22 January 2020, at Adlington Manor;*

a. ....

b. *Forced or attempted to force medication in to Resident 1's mouth.*

**This charge is found NOT proved.**

The panel took account of the witness statement of Witness 2 dated 14 July 2022, in which he stated:

*'On 23 January 2020 I was at Adlington Manor to assess Resident 1. During this, Resident 1 alleged to me that at 5.15am an agency nurse had turned on the light in her room and tried to give Resident 1 her morning medication. Resident 1 had full capacity and informed the nurse that her medication was due at 7am. The nurse had told her that it didn't matter if she took it now, and the nurse tried to forcibly administer the medication to Resident 1. Resident 1 said she was frightened and distressed by this.'*

The panel considered Miss Chagwedera's response to the allegation in the Regulatory Concerns Response Form in which she stated:

*'I asked her politely in a kind manner and professional manner. Which she looked at me puzzled. I did not force her to take the medication. She then refused to take it . She started shouting at me a little bit saying I was trying to force her. The patient was clearly unhappy with me asking her to take her early morning medication. I did not make any physical contact with her or touch her or her mouth. The patient assumed because I kept trying to talk to her and persuade her a few times I was forcing her. I never raised my hand or anything to make physical contact.'*

The panel noted that Witness 2 did not directly witness the incident on 23 January 2020 but reported the complaints made to him by Resident 1. However, there was no incident report made at the time of the incident.

The panel further noted that Witness 2 had stated in his Witness Statement that *'Resident 1 was a difficult patient at times and often made allegations against staff members, which were untrue'*. This was further confirmed by Witness 2 in his oral evidence.

The panel had sight of Cheshire East Safeguarding Report dated 25 March 2020 which stated that the safeguarding concerns were inconclusive as the records on Resident 1's Medication Administration Record (MAR) did not tally with Resident 1's account of the incident.

The panel was of the view that there was insufficient evidence to substantiate the claims of Resident 1 and given that it had been noted that Resident 1 had made false allegations against staff in the past.

Accordingly, the panel was not satisfied that the NMC had discharged the burden of proof, therefore, charge 2b is found not proved.

### **Charge 3**

3. *On a shift 31 January 2020, at Orchard Nursing Home, administered or attempted to administer medication to Resident 2 in darkness and/or without due care and attention.*

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

The panel considered the witness statement of Witness 4 dated 14 October 2022, in which he stated:

*'Resident 2 told me that Ms Chagwedera had come into his room in total darkness and attempted to put medication into his mouth. She hadn't communicated with him about what she was administering, and she actually dropped the medication in the*



*bed and was rummaging around his bed looking for it. She also spilled Coca-Cola all down his front. Resident 2 complained that he was “saturated”.’*

The panel noted that Witness 4 was consistent in his account of the incident as reported by Resident 2, in his Local Statement to Florence agency and in his oral evidence to the panel.

The panel took into account Miss Chagwedera’s response in the Local Level Response dated 31 January 2020 where she stated:

*‘...Its all a misunderstanding with the resident. I did put the lights on in his room, his door was already open and it was open all night. I gave him his tablets and as I gave him a drink to swallow, I spelt his diet coke by mistake. the diet coke drink spilt on his shirt and I quickly got paper tissues of the sink to get him dry. He did seem agitated and I did apologize...’*

The panel further considered Miss Chagwedera’s Registrant Reflective for Panel in which she stated:

*‘...The patient spilt his drink on his shirt whilst lying in bed to take his medication. He shouted at me and I quickly apologised and rushed to get sink tissues to wipe him dry...’*

The panel noted that Miss Chagwedera was inconsistent in her account as she had stated in the Local Level Response that she had spilled Resident 2 ‘s drink while in the Registrant Reflective for Panel, she stated that Resident 2 had spilled his own drink. The panel was of the view that these conflicting accounts raises doubts on the credibility of Miss Chagwedera’s account of the incident. In contrast, Witness 4’s account of the incident as reported by Resident 2 had been clear and consistent, even when confronted with the opposing statement of Miss Chagwedera, Witness 4 had maintained his position on his account of the incident. Witness 4 described the demeanour of Resident 2 to be shocked

and concerned, and the complaint was made at the first opportunity. The panel therefore found Witness 4's account to be credible and reliable. It also bore in mind that Resident 2 had no history of unnecessary agitation or making false allegations against staff.

The panel was of the view that it was more likely than not that on 31 January 2020, Miss Chagwedera had administered or attempted to administer medication to Resident 2 in darkness and/or without due care and attention. Accordingly, charge 3 is found proved.

#### **Charge 4b**

4. *On a shift 31 January 2020, at Orchard Nursing Home,*
  - a. ....
  - b. *Administered a nebulised medication incorrectly in that you attempted to give it orally and/or subsequently failed to insert the medication ampoule into the nebuliser correctly.*

#### **This charge is found NOT proved.**

The panel took account of the witness statement of Witness 4, together with his oral evidence, in which he stated that Resident 3 had complained that *'Miss Chagwedera had tried to administer his nebuliser through his mouth'* and Resident 3 had told her that it was supposed to be put in the machine.

The panel considered Miss Chagwedera's response in the Regulatory Concerns Response Form in which she stated:

*'...It was a clear misunderstanding between me and the patient. What happened was short and simple. I went in to administer the medication to the patient and gave him his tablets first. After giving tablets, I had the ampoule in my hand. I then made a mistake by raising my hand towards the patient holding the ampoule in my right*

*hand. He then thought I was about to administer it orally which was untrue. He then shouted at me and said that I tried to give him the ampoule orally. I told him straight at that point, that it was a mistake and I would not give him orally expect using the nebulizer...'*

The panel was of the view that a reasonable person would not administer a nebulised medication orally due to the nature of a medication ampoule, which is a large plastic ampoule containing liquid. The panel was therefore satisfied that it was more probable than not, that Resident 3 had misunderstood the 'raising' of Miss Chagwedera's hand as an attempt to administer the nebulised medication orally.

The panel further noted that Witness 4 had stated in his witness statement that:

*'...Ms Chagwedera had disappeared for a while and returned but still seemed to have difficulty inserting the nebuliser into the machine. She eventually inserted the nebuliser incorrectly, so Resident 3 didn't get the benefits of the nebuliser when trying to breathe in the medication.'*

However, Witness 4 had stated in his oral evidence that the nebuliser used at Orchard Nursing Home was unique and different from other nebulisers generally used at nursing homes and hospitals. Therefore, the nebuliser at Orchard Nursing Home required particular attention and more time to understand its usage given that Miss Chagwedera was a nurse on agency placement and not a member of staff of Orchard Nursing Home. This might have further agitated Resident 3.

The panel also noted that Resident 3 had only concluded that the nebulised medication was not inserted into the nebuliser correctly because he did not get the benefits of the nebuliser. The panel questioned this conclusion as it was of the view that the effect of this nebulised medication was not immediate and there could be other contributing factors that made Resident 3 not to get the benefits of the nebuliser. The panel also noted that no further medical treatment was required.

Accordingly, the panel was not satisfied that the NMC had discharged the burden of proof, therefore, charge 4b is found not proved.

### **Charge 8**

8. *Your conduct at Charge 7 above was dishonest because you knew that you ought to declare your conviction but did not do so because you wanted to avoid any potential consequences of the declaration.*

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

The panel took into account that Miss Chagwedera had revalidated her NMC registration Personal Identification Number (PIN) on 9 February 2019 where she declared that she had no police charge, caution or conviction. It had sight of [PRIVATE].

The panel considered the Notes of Meeting dated 9 October 2019 where Miss Chagwedera had told Lotus Care that she knew she had to declare her convictions but the *'Judge told me they would do so'*. The panel also noted Miss Chagwedera's response to charge 8 in the Case Management Form where she stated:

*'...I did not know that I was supposed to let the NMC know about any convictions.'*

The panel took into consideration that Miss Chagwedera had provided conflicting statements in which on one hand, she acknowledged her duty to report her conviction and on the other hand, she claimed that she had no knowledge that she had a duty to report her conviction. The panel had regard to paragraph 23 (2), 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' ("the Code") which provides:

## **‘23 Cooperate with all investigations and audits**

.....

*To achieve this, you must:*

**23.2.** *Tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to or have been found guilty of, a criminal offence (other than a protected caution or conviction).’*

The panel was of the view that Miss Chagwedera’s inconsistent statements on her knowledge of her duty to declare her conviction, was indicative of an intention to conceal her conviction to avoid any potential consequences of such declaration. Although, it recognised that registered nurses are included within the Notifiable Occupation Scheme whereby police officers/Judges have a discretion to inform Regulators of criminal investigations involving registrants. However, this does not diminish Miss Chagwedera's responsibility to inform the NMC herself in accordance with the Code.

Accordingly, the panel determined that Miss Chagwedera’s conduct at charge 7 was dishonest, therefore, charge 8 is found 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 Miss Chagwedera’s fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register unrestricted.

The panel, in reaching its decision, has recognised its statutory duty to protect the public and maintain public confidence in the profession. Further, it bore in mind that there is no

burden or standard of proof at this stage and it has therefore exercised its own professional judgement.

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

### **Submissions on misconduct and impairment**

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

Ms Butler cited the case of *Cheatle v GMC* [2009] EWHC 645, in which Cranston J made clear that panels considering the question of impairment should engage in a two-step process:

- a. '*First, they should decide whether on the facts found proved, one or more of the 5 routes provided for has been established; only then*
- b. '*The second step is to consider whether the registrant's fitness to practise is impaired by reason of that route.*'

Ms Butler further referred the panel to the definition of misconduct in the case of *Roylance* and submitted that although breaches of the Code do not automatically amount to a finding of misconduct however the facts found proved in this case are serious and wide ranging, consequently, they should be marked as misconduct.

Ms Butler reminded the panel that Miss Chagwedera had admitted impairment in her responses to the allegations put by the NMC. She however submitted that this admission should be treated with the utmost caution as a nurse would not necessarily understand or appreciate the impact of admissions, especially in the context of the implications of a finding of current impairment. She further submitted that Miss Chagwedera's admission would in any event be "*date stamped*" as the panel is considering impairment today, rather than impairment on the day Miss Chagwedera admitted it.

Ms Butler drew the panel's attention to the NMC Procedural competencies required for best practice, evidence-based medicines administration and optimization. She submitted that Ms Chagwedera had demonstrated significant failings in the competencies required for medication administration. Ms Butler highlighted that medication administration is one of the fundamental duties of nurses in the clinical environment and a lack of competence in this area could pose serious consequences for patients. She submitted that the findings in this case demonstrate an absence of basic knowledge, a lack of compassion, an absence of effective administration of medicines and lack of awareness of safety, on Miss Chagwedera's part. She submitted that each of the proven charges is sufficient to demonstrate that misconduct is established. She stated that Miss Chagwedera has declined to offer any evidence of remediation to the panel.

Ms Butler noted that [PRIVATE]. She stated that the basis of charge 7 is that Miss Chagwedera revalidated her NMC registration, eleven days after her conviction and specifically denied her conviction on the NMC revalidation form. She submitted that [PRIVATE]. She referred the panel to Article 22 (1) (a) (iii) of the Order and submitted that:

*"If the criminal offending took place in the nurse, midwife or nursing associate's private life, and there's no clear risk to patients or members of the public, then it is unlikely that regulatory action would be required to uphold confidence in nurses or professional standards. However, a criminal conviction resulting in a custodial sentence (including suspended sentences) is deemed serious."*

Ms Butler highlighted that under the Standards of Proficiency as prescribed by the NMC Code, a registered nurse is required to:

*'Being an accountable professional:*

*1.1. understand and act in accordance with the Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates, and fulfil all registration requirements*

*1.2. understand and apply relevant legal, regulatory and governance requirements, policies, and ethical frameworks, including any mandatory reporting duties, to all areas of practice, differentiating where appropriate between the devolved legislatures of the United Kingdom*

*1.3. understand and apply the principles of courage, transparency and the professional duty of candour, recognising and reporting any situations, behaviours or errors that could result in poor care outcomes'*

Ms Butler submitted that Miss Chagwedera had failed to maintain the fundamental values required of registered nurses to maintain professionalism, which inspires confidence in nurses by the general public.

On the matter of the duties of accountability with reference to the NMC revalidation process, Ms Butler referred the panel to section 23(2) of the Code which provides:

**23 Cooperate with all investigations and audits**

.....

*To achieve this, you must:*

**23.2** *tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)'.*



Ms Butler submitted that in cases involving dishonesty, a finding of impairment is necessary to uphold public confidence in nurses or to promote proper professional standards. She further referred the panel to section 20.2 and section 21.3 of the Code which required nurses to act with honesty and integrity at all times. She submitted that the facts relevant to this case which indicate dishonesty on Miss Chagwedera's part, relate to Charge 7 and that separate consideration should be given at this stage to the dishonesty element.

Ms Butler submitted that in considering impairment on the ground of dishonesty, the panel should consider the context of dishonesty, and specifically areas of context directly linked to the reasons why the proven events occurred. She asserted that the circumstances in which Miss Chagwedera's dishonesty arose, have not been addressed by Miss Chagwedera as she had offered no context. Ms Butler submitted that in the absence of any other explanation by Miss Chagwedera at the time, the only conclusion was that the failure to disclose her conviction was deliberate.

Ms Butler submitted that Miss Chagwedera had provided no information about her personal circumstances. She submitted that Miss Chagwedera has also failed to provide any evidence to demonstrate insight, training or steps taken to strengthen her nursing practice. She submitted that although the nature of Miss Chagwedera's work environment at the time, was peripatetic, this factor does not mitigate the seriousness of the concerns or her dishonesty.

Ms Butler submitted that in considering the seriousness of the proven charges, the concerns in this case are such that they are incapable of being put right or remediated, especially the element of dishonesty. She invited the panel to consider the serious concerns in this case, based on the necessity to promote public confidence in nurses, midwives and nursing associates. Ms Butler submitted that the concerns raised in this case are so serious that a finding of impairment is required to uphold proper professional standards and conduct, and to maintain public confidence in the profession. She stated that it is open to the panel, having considered the evidence at great length, to establish a

case of impairment on the grounds of misconduct, dishonesty and criminal convictions. Ms Butler submitted that this would mark the profound unacceptability of the concerns, emphasise the importance of the fundamental tenets breached and reaffirm proper standards or behaviour required of registered nurses.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments.

### **Decision and reasons on misconduct**

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

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

#### **'1 Treat people as individuals and uphold their dignity**

*To achieve this, you must:*

*1.1 treat people with kindness, respect and compassion*

*1.2 make sure you deliver the fundamentals of care effectively*

#### **4 Act in the best interests of people at all times**

*To achieve this, you must:*

*4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment*

#### **6 Always practise in line with the best available evidence**

*To achieve this, you must:*

**6.2** *maintain the knowledge and skills you need for safe and effective practice*

**13 Recognise and work within the limits of your competence**

*To achieve this, you must, as appropriate:*

**13.3** *ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*

**18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations**

*To achieve this, you must:*

**18.1** *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*

**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,.....*

**23 Cooperate with all investigations and audits**

.....

*To achieve this, you must:*

**23.2** *tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)?*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

In relation to charge 1, the panel was of the view that Miss Chagwedera's failure to give prebreakfast medications to fourteen residents, fell short of the fundamental nursing duties and obligations that registered nurses are expected to perform to patients under their care. It considered the witness statement of Witness 1 dated 12 September 2022 in which she stated:

*'The GP was contacted, and they advised that none of the omissions were critical...'*

The panel noted that although there was no actual harm caused to the residents as the omissions were not critical, Miss Chagwedera's failure to give the prebreakfast medication, posed a real risk of harm to the residents. Accordingly, the panel was satisfied that Miss Chagwedera's conduct in charge 1 was sufficiently serious to amount to misconduct.

The panel then considered charge 2a. It took account of Miss Chagwedera's Registrant Reflective for Panel in which she stated:

*'...The last medication round was done at 9pm. Giving medication earlier was because the patient was awake and it wasn't far till 0700Hrs. I thought at the time it's easier to administer whilst she just had her toilet break, instead of waking her up again after she goes back to sleep...'*

The panel noted that Miss Chagwedera had explained her conduct in charge 2a to be intended to minimising inconvenience to Resident 1. The panel decided that given that there was no information before it to show the critical nature of the medication or that it was time dependent to be effective, Miss Chagwedera's action in charge 2a was not so serious as to amount to misconduct.

With respect to charge 3, the panel considered Miss Chagwedera's conduct to amount to poor practice in administration of medication. It was of the view that her action demonstrated recklessness as Miss Chagwedera was on an agency placement to Orchard Nursing Home at the time and therefore, was not familiar with the residents nor their prescribed medication. By administering medication in the dark, Miss Chagwedera placed the patient at risk and she did not identify that the right patient was receiving the right medication at the right time.

The panel noted that Witness 4 had stated in his witness statement dated 14 October 2022 that *'spilling the resident's drink on him didn't present any clinical risks but made Resident 2 feel undignified and uncomfortable.'* The panel therefore determined that Miss Chagwedera's conduct in charge 3 fell short of the fundamental nursing care that is expected of a registered nurse and amounted to misconduct.

In relation to charge 4a, the panel noted that Witness 4 had stated in his oral evidence that the nebuliser used at Orchard Nursing Home was unique and different from other nebulisers generally used at nursing homes and hospitals. It bore in mind that Miss Chagwedera was working in a night shift as the sole nurse at Orchard Nursing Home on an agency placement. The panel was of the view that although Miss Chagwedera's action in charge 4a was not good practice, the surrounding circumstances at the time led to her usage of the internet in order to enable her to administer the nebulised medication. The panel therefore decided that Miss Chagwedera's actions in charge 4a did not amount to misconduct.

With respect to charge 5a, the panel noted that Miss Chagwedera's attempt to prepare medications in a toilet, posed a risk of harm to patients under her care. It was of the view that such conduct was unhygienic, presented a danger of contamination and endangered patients' safety. The panel determined that Miss Chagwedera's action in charge 5a did fall seriously short of the conduct and standards expected of a registered nurse and amounted to misconduct.

The panel then considered charge 5b. It was of the view that Miss Chagwedera as a registered nurse, should have known that seeking direction in medication administration, from a junior member of staff who was not clinically trained, posed a risk of harm to patients. It was also a breach of section 13.3 of the Code as Miss Chagwedera as a registered nurse failed to '*ask for help from a suitably qualified and experienced professional to carry out any action or procedure that is beyond the limits of your competence*'. Therefore, the panel determined that Miss Chagwedera's actions in charge 5b amounted to misconduct.

The panel considered Miss Chagwedera's conduct in charge 6 to be serious as it posed a risk of harm to Resident 4. It was of the view that her conduct fell below the standard of practice expected from a registered nurse and it therefore determined that it amounted to misconduct.

In relation to charge 7, the panel noted that Miss Chagwedera's failure to declare her convictions to the NMC, was a clear breach of the requirement of paragraph 23.2 of the Code. The panel was of the view that her conduct demonstrated a lack of accountability and transparency on her part and constituted a breach of duty of candour to the NMC. It determined that Miss Chagwedera's conduct in charge 7 amount to misconduct.

The panel then considered charge 8. It was concerned that although Miss Chagwedera was aware of her duty to declare any conviction to the NMC, she deliberately concealed her conviction to avoid any potential consequences of such declaration. The panel considered honesty, integrity, and trustworthiness to be the bedrock of the nursing profession and, in being dishonest, it found Miss Chagwedera to have breached a fundamental tenet of the nursing profession. The panel considered that to characterise Miss Chagwedera's conduct as anything other than misconduct would send the wrong message about the nursing profession. Therefore, the panel was in no doubt that Miss Chagwedera's actions in being dishonest amounted to misconduct.

Consequently, having considered all the charges individually and as a whole, the panel determined that Miss Chagwedera's actions at charges 1, 3, 5a, 5b, 6, 7 and 8 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, Miss Chagwedera's fitness to practise is currently impaired.

Registered nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust 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* [2011] EWHC 927 (Admin) in reaching its decision. In paragraph 74, she said:

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

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

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

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

The panel found that all limbs of the Grant test are engaged in this case. At the time of these incidents, Miss Chagwedera's misconduct placed residents under her care at unwarranted risk of harm, brought the nursing profession into disrepute and breached fundamental tenets of the nursing profession, relating to adequate patient care. It noted that Miss Chagwedera's conduct in failing to declare her convictions to the NMC was dishonest.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether Miss Chagwedera's misconduct was remediable and whether she had strengthened her nursing practice.

Regarding insight, the panel was of the view that Miss Chagwedera has shown limited insight into her failings. It took account of Miss Chagwedera's reflective statements, contained in the Registrant Response Bundle. It noted that although Miss Chagwedera



had made partial admissions to her failings and tendered a general apology, she failed to demonstrate sufficient insight on the impact of her failings on residents under her care, her colleagues and the nursing profession. The panel was concerned that Miss Chagwedera did not demonstrate sufficient understanding of the seriousness of her failings and did not provide detailed steps she would take if similar scenarios should occur in future, for some of her failings.

The panel also noted that Miss Chagwedera had, on several occasions, sought to deflect responsibility for her actions. In her response to charge 1, Miss Chagwedera had stated in her reflective account that:

*'This incident happened, as during handover , I had not been given clear handover of the early morning medication. The MARS chart were not detailed properly on the early morning medication. For example in many MARS chart the times are highlighted or written the time properly. On the MARS chart I checked once and twice and 3 times but there were not detailed at all. I had believed afterwards, on my reflection about the incident, that the nursing home maybe had not written the MARS chart properly.'*

Additionally, in the Notes of Meeting dated 9 October 2019, Miss Chagwedera had told Lotus Care that she knew she had to declare her convictions but the *'Judge told me they would do so'*. The panel was of the view that Miss Chagwedera had demonstrated a lack of responsibility and accountability for her failings.

In considering whether Miss Chagwedera had strengthened her nursing practice, the panel was of the view that the concerns were generally capable of remediation. However, it considered that Miss Chagwedera's lack of accountability for her failings, lack of professionalism and her dishonest conduct are suggestive of attitudinal concerns which are difficult to remediate. It noted that there was no evidence before it to indicate that Miss Chagwedera had strengthened her nursing practice and addressed her failings. Although Miss Chagwedera has had limited engagement with the NMC prior to these proceedings,

she has not provided any evidence of training nor testimonials to demonstrate any positive steps she had taken to remediate her failings and strengthen her nursing practice. Based on the evidence before the panel and the context of Miss Chagwedera's failings in fundamental aspects of nursing practice, the panel had significant concerns as to whether Miss Chaqwedera is capable of remediating her failings.

In light of this, this panel determined that Miss Chagwedera is liable to repeat matters of the kind found proved and there remains a risk of harm to the public. The panel therefore decided that a finding of continuing 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 had regard to the serious nature of Miss Chagwedera's failings and determined that public confidence in the profession, particularly as it involved dishonesty, would be undermined if a finding of impairment were not made in this case. For this reason, the panel determined that a finding of current impairment on public interest grounds is required. It was of the view that a fully informed member of the public, aware of the proven charges in this case, would be very concerned if Miss Chagwedera were permitted to practise as a registered nurse without restrictions.

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

## **Sanction**

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case 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**

Ms Butler referred the panel to the NMC Sanction Guidance and Article 29(5)(a) of the Order, in its consideration on the appropriate sanction to be imposed in this case. She submitted that in applying the principle of proportionality, the panel should find a fair balance between the registered nurse's rights and the overarching objective of public protection. She stated that the panel should first consider whether the sanction with the least impact on the nurse would be enough to achieve public protection, if not, the panel should then consider escalation until it arrives at a sanction most appropriate to achieve the most appropriate outcome.

Ms Butler submitted that it is the NMC position that a striking off order be imposed given the findings of fact and the subsequent conclusion of the panel that Miss Chagwedera's nursing practise is impaired by virtue of misconduct, dishonesty and criminal convictions.

Ms Butler submitted that the following aggravating features had been identified in this case:

- 1) Failures demonstrated across fundamental areas of nursing practice.
- 2) A pattern of misconduct across multiple shifts and employers.
- 3) Falsification of records in the revalidation process.

- 4) Deep-seated personality, attitudinal and behavioural issues.
- 5) A lack of remediation, remorse or insight into the concerns.
- 6) Two convictions, [PRIVATE].
- 7) Dishonesty.

Ms Butler submitted that there are almost no mitigating features in this case however, on a full reading of the disciplinary hearings, the following personal observations may be made:

- Miss Chagwedera has engaged with the process. She could have attended to address the panel at any stage of these proceedings but has chosen not to.

Ms Butler highlighted that if Miss Chagwedera is currently under an interim order, this may have contributed to her lack of remediation for the reasons stated when a registrant works exclusively for agencies. However, the NMC has no information on Miss Chagwedera's current employment status.

Ms Butler submitted that although Miss Chagwedera has no fitness to practise history, her conduct was sufficiently serious that to retain her registration is fundamentally incompatible with continuing to be a registered nurse. She stated that in the balance of the individual nurse's rights and the public interest, the panel should be mindful of *Huang v Secretary of State for the Home Department* [2007] UKHL 11 at paragraph 19:

*'[The exercise] must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for careful assessment at this stage'*

Ms Butler therefore submitted that an absence of previous history in this case is not a relevant consideration when considering the most proportionate sanction.

With respect to the appropriate sanction to be considered by the panel, Ms Butler made the following submissions:

*‘Available Sanctions (and the order in which they ought to be considered):*

*I. Caution*

*A caution is not sufficient in this case.*

*II. Conditions of Practise*

*The panel’s findings on seriousness determines that the registrant’s impairment is not on the lower end of the spectrum when considering the dishonesty elements established in the case. Further, it is submitted that the ambition of a Conditions of Practise Order is to ameliorate deficiencies in the nurse’s practise. In order to achieve this, those deficiencies must be capable of amelioration. It is submitted that in the instant case, dishonesty is not capable of being rectified by a sanction of this type.*

*III. Suspension*

*Nurse Chagwedera has not provided the panel with any evidence of training. Nor has she provided testimonials from current employers. In fairness, it should be noted that by the very nature of Agency nursing, means of supervision/ training would be unavailable. Equally, testimonials would have low value for temporary workers. That being said, the panel has nothing on which to consider the balancing exercise required when ordering suspension.*

*In any event, what would or could suspension achieve? It is submitted that it would only delay a final decision on this nurse’s future and would fail to address the significant public protection and public interest factors in this case as referred to by the panel in their deliberations on impairment.*

*This is not a case where there is a single instance of misconduct. There appears to be evidence of harmful deep-seated personality and attitudinal problems. The panel heard evidence about the nurse's attitude to the complaints against her and heard that she was aggressive when confronted. For this she apologised but only in so much as her anger was directed towards her timesheet not being submitted by the employer. She offered no apology or insight into the clinical failings that brought about this situation.*

*The panel also heard a strange account of the nurse removing herself to a room and ordering a delivery pizza when she had been asked to remove herself from the clinical space. This evidence was unchallenged by the registrant.*

*Finally, a suspension order could not adequately address the dishonesty factor in this case. It also does not address the serious matter of two [PRIVATE]*

#### *IV. Striking off*

*It is submitted that this is the only sanction which could adequately address the impairment decided upon by the panel. It serves the dual purpose of protection of the public and maintaining trust in the profession. There is no remediation, some remorse and, it is suggested, insincere insight. Therefore, the risk of repetition remains high.*

*The convictions for Disqualified Driving, only days apart go to the registrant's ingrained attitudinal problems. There is seemingly no respect for authority, orders of the court, her regulatory body and duty of candour. Fundamentally, she appears to demonstrate a complete absence of the fundamental tenets of what makes a nurse. These are, to prioritise people, to practise effectively, to preserve safety and to promote professionalism and trust.*

*The advice of... (Witness 3)... when interviewing the registrant (at page 32 of the bundle) on 27 February 2022 were the most telling:*

*"TC was advised to:*

(1)...(2)

(3) *Consider a change of profession.”*

*Wise words indeed from a professional interviewing this registrant.’*

In conclusion, Ms Butler submitted that the NMC seeks a Striking Off Order as this is the only order, which is capable of protecting the public, maintaining public confidence in the professions and the NMC whilst simultaneously declaring and upholding proper standards of conduct and performance. She asserted that this would send a clear message to the public and other registered nurses that the NMC will act robustly in cases of this nature.

### **Decision and reasons on sanction**

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

The panel took into account the following aggravating features:

- Failures demonstrated across fundamental areas of nursing practice.
- A pattern of misconduct across multiple shifts and employers.
- Failure to declare convictions to the NMC.
- Evidence demonstrates deep-seated personality, attitudinal and behavioural issues.
- A lack of remediation, remorse or insight into the concerns.
- Two undeclared convictions, [PRIVATE].
- Dishonesty.
- Miss Chagwedera was the nurse in charge and in a position of authority at the time of the incidents.

- There was potential risk of harm to residents under her care.

The panel also took into account the following mitigating feature:

- Early admissions to some of the charges.

The panel noted that Miss Chagwedera has engaged with the NMC prior to these proceedings. Furthermore, the panel offered an opportunity to Miss Chagwedera to engage with these proceedings and was sent its written decision at each stage of the proceedings to make submissions or written representations. Despite acknowledging receipt of the panel's decision, Miss Chagwedera decided not to attend the hearing.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

The panel next considered whether placing conditions of practice on Miss Chagwedera's registration would be a sufficient and appropriate response. Although the panel acknowledges that some of the clinical concerns could be addressed through a conditions of practice order, the panel determined that given the seriousness of the concerns, Miss



Chagwedera's attitudinal concerns and her lack of insight into the impact of her failings on patients and the public, there are no practical or workable conditions that could be formulated. Accordingly, a conditions of practice order would not address the significant risk of repetition. The panel had no evidence before it to suggest that Miss Chagwedera would comply with any conditions of practice given that she has not taken any positive steps to strengthen her nursing practice. The panel noted that the SG indicates that:

*'Conditions may be appropriate when some or all of the following factors are apparent :*

- *no evidence of harmful deep-seated personality or attitudinal problems...'*

In this case, the panel has identified deep-seated attitudinal problems including serious dishonesty. Consequently, the panel decided that any conditions of practice order would not be appropriate in this case and would not protect the public nor be in the public interest.

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

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

The panel considered that Miss Chagwedera's failings were in fundamental aspects of nursing practice and that they posed a real risk of harm to residents under her care. It

noted that Miss Chagwedera had shown limited insight on the seriousness of the concerns and there was no evidence to show that Miss Chagwedera has taken any positive steps to strengthen her nursing practice or to remediate her failings. The panel was of the view that her limited insight, her failure to strengthen her nursing practice and her serious dishonest conduct, indicates deep-seated attitudinal problems which heightens the significant risk of repetition.

The panel was of the view that Miss Chagwedera's 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 Miss Chagwedera's actions is fundamentally incompatible with Miss Chagwedera remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction and would not protect the public nor satisfy the public interest consideration in 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?'*

The panel noted that Miss Chagwedera's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Chagwedera's actions were serious and to allow her to

continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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

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

This will be confirmed to Miss Chagwedera 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 Miss Chagwedera's own interests until the striking-off sanction takes effect.

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

### **Submissions on interim order**

The panel took account of the submissions made by Miss Butler. She submitted that given that the panel has determined that a striking-off order is appropriate and proportionate, an

interim suspension order for a period of 18 months is necessary in order to protect the public and also in the public interest, to cover the 28-day 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 in order to protect the public and otherwise in the public interest, during any potential appeal period.

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

That concludes this determination.