

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

**Substantive Hearing  
Tuesday 27 June – Wednesday 5 July 2023**

Virtual Hearing

**Name of Registrant:** **Stuart Sullivan**

**NMC PIN** 98C1355E

**Part(s) of the register:** Nursing – Sub Part 1  
Adult Nurse – Level 1 (April 2001)

**Relevant Location:** London

**Type of case:** Misconduct

**Panel members:** Richard Youds (Chair, Lay member)  
Claire Rashid (Registrant member)  
Georgina Foster (Lay member)

**Legal Assessor:** Attracta Wilson

**Hearings Coordinator:** Elena Nicolaou

**Nursing and Midwifery Council:** Represented by Alban Brahim, Case Presenter

**Mr Sullivan:** Not present and unrepresented

**Facts proved:** Charges 1a, 1b, 1c, 1d, 2 (only in relation to 1a, 1c and 1d), 3a, 3b, 3c, 4a, 4b, 4c, 4d and 5 (in its entirety)

**Facts not proved:** Charge 2 (only in relation to 1b)

**Fitness to practise:** Impaired

**Sanction:** **Striking-Off Order**

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

## Details of charge

That you, a Registered Nurse:

- 1) On 1 October 2019 you sent an email to Colleague A which stated:
  - a) “I have been sent this by Queen Anne Hospital to complete”; **[PROVED]**
  - b) “The company before was called Queen Anne Hospital now it’s called something else, but the location is on Queen Anne Street”; **[PROVED]**
  - c) “Queen Anne Street Hospital has refused to do a reference for Colleague A as they did not work with her for a long period of time after the change”; **[PROVED]**
  - d) You were the Hospital Director of Queen Anne Street Medical LTD. **[PROVED]**
- 2) Your actions in charge one were dishonest as you provided details within an email you sent to Colleague A which you knew were false. **[PROVED – in relation to 1a, 1c and 1d]**
- 3) On or before 26 September 2019 you completed a typed reference for Colleague A which stated:
  - a) Dates of employment from 17th April 2017 to 5th August 2019; **[PROVED]**
  - b) That your job title was a senior manager; **[PROVED]**
  - c) “Her attention to detail proactive attitude and ability to communicate with all members of the multi professional team are extremely strong.” **[PROVED]**

- 4) On or before 1 October 2019 you completed a reference form for Colleague A which stated:
  - a) That she was a personal assistant; **[PROVED]**
  - b) Dates of employment from 17th April 2017 to 5th August 2019; **[PROVED]**
  - c) Indicated good for all elements of Colleague A's experience and / or work ethic. **[PROVED]**
  - d) That your job title was a senior manager. **[PROVED]**
- 5) Your actions in charge three and four were dishonest as you provided details within a reference form and/or a typed reference for Colleague A that you knew were false. **[PROVED in its entirety]**

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

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

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

Mr Brahimi, 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' (the Rules).

The panel accepted the advice of the legal assessor.

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

In the light of all of the information available, the panel was satisfied that Mr Sullivan 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 Mr Sullivan**

The panel next considered whether it should proceed in the absence of Mr Sullivan. It had regard to Rule 21 and heard the submissions of Mr Brahimi who invited the panel to continue in the absence of Mr Sullivan. He submitted that Mr Sullivan had voluntarily absented himself.

Mr Brahimi submitted that various attempts have been made by the NMC to contact Mr Sullivan, via both email and telephone. He submitted that there has been no engagement at all by Mr Sullivan with the NMC in relation to these proceedings since 2019 and, as a consequence, there was no reason to believe that an adjournment would secure his attendance on some future occasion.

The panel requested details of any attempts to telephone Mr Sullivan in relation to the hearing, and also asked that the NMC make a further attempt to contact Mr Sullivan by telephone. Following an adjournment, confirmation was received from the NMC that a call had been made on 21 June 2023, which was unanswered, and a message had been left. A further call today was unanswered.

The panel accepted the advice of the legal assessor.

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

The panel has decided to proceed in the absence of Mr Sullivan. In reaching this decision, the panel has considered the submissions of Mr Brahim and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Sullivan;
- Mr Sullivan has not engaged with the NMC since 2019 and has not responded to any of the letters sent to him about this hearing;
- There is no reason to suppose that adjourning would secure Mr Sullivan's attendance at some future date;
- One witness has been warned to attend today to give live evidence, others are due to attend in the upcoming days;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2019;
- 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 Mr Sullivan in proceeding in his absence, and the panel noted that his right to a fair hearing takes precedence over any inconvenience to witnesses. The panel noted that the evidence upon which the NMC relies has been sent to him at his registered email address, he has made no response to the allegations. He will

not be able to challenge the evidence relied upon by the NMC and will not be able to give evidence on his 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 Mr Sullivan's decision to absent himself from the hearing, waive his rights to attend, and/or be represented, and to not provide evidence or make submissions on his own behalf.

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

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

During the course of the witness's evidence, Mr Brahimi made an application that this case be held partly in private in relation to part of the evidence of Witness 2, on the basis that proper exploration of Mr Sullivan's case involves reference to health matters. The application was made pursuant to Rule 19 of the Rules.

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.

Having heard that there will be reference to Mr Sullivan's health, the panel determined to hold part of the hearing in private in order to protect his right to privacy and confidentiality.

### **Background**

The charges against Mr Sullivan in this case relate to incidents that date back to 2019.

It is alleged that, following Mr Sullivan's employment with Queen Anne Street Medical Centre (QASMC), he provided a reference for Colleague A when he was not in a position to do so. Mr Sullivan was also allegedly dishonest in that he provided details within an email he sent to Colleague A, which he knew was false.

It is also alleged that Mr Sullivan's actions, as charged in charges three and four, were dishonest as he provided details within a reference form and/or a typed reference for Colleague A that he knew were false.

#### **Evidence of Witness 4**

Mr Brahimi referred to the written statement of Witness 4 included within the NMC's bundle, as well as accompanying exhibits.

Witness 4 is a Paralegal who is employed by the NMC.

Mr Brahimi submitted that Witness 4's evidence forms part of the NMC's case, alongside the accompanying exhibits, that they provided to assist the panel with Mr Sullivan's contact details. This evidence has already been served upon all parties as part of the NMC's overall case.

Mr Brahimi invited the panel to admit Witness 4's statement and exhibits into evidence as read.

The panel took no issue with taking Witness 4's evidence as read, in light of the above.

#### **Evidence of Witness 1**

The evidence of Witness 1 raised three questions for the panel in relation to the correspondence between Elysium Healthcare and QASMC, and to clarify how this may have come into Mr Sullivan's possession.

The hearing was adjourned for a short period of time to obtain this information, and Witness 1 provided a supplementary witness statement with responses to the questions put to him.

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

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Brahimi on behalf of the NMC.

The panel has drawn no adverse inference from the non-attendance of Mr Sullivan.

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: Human Resourced Director; Elysium Healthcare Ltd
- Witness 2: Theatre Manager; QASMC
- Witness 3: Group Operating Manager; QASMC



The panel also took account of the written evidence provided by the following witness:

- Witness 4: Paralegal; NMC

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

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

### **Charge 1**

*That you, a Registered Nurse:*

1) *On 1 October 2019 you sent an email to Colleague A which stated:*

a) *“I have been sent this by Queen Anne Hospital to complete”;*

b) *“The company before was called Queen Anne Hospital now it’s called something else, but the location is on Queen Anne Street”;*

c) *“Queen Anne Street Hospital has refused to do a reference for Colleague A as they did not work with her for a long period of time after the change”;*

d) *You were the Hospital Director of Queen Anne Street Medical LTD.*

**This charge is found proved in its entirety.**

The panel considered that it is clear the email referred to in this charge came from Mr Sullivan's personal email address, as it cross referenced the screenshot of the NMC's system providing Mr Sullivan's details, as well as the evidence of Witness 4 which confirms the same.

The panel raised the question, following some confusion, of whether the email was sent to Colleague A directly. It considered from the evidence before it that the email was sent from Mr Sullivan's personal email address at 17:30 hours on 1 October 2019, although it is addressed '*Dear Elysium...*'. The panel could clearly see that this email was then forwarded on, by Colleague A, to an HR Officer the following morning at 08:50 hours; the subject line stating '*FW: [Colleague A] reference*'. The panel considered that, in light of the above, it was clear that Colleague A must have received the email from Mr Sullivan, as she would subsequently not have been able to forward it on if that was not the case.

The panel considered the supplementary statement provided by Witness 1, who further confirmed that the HR Officer referred to above works for Elysium Healthcare.

The panel then considered each of the charges in turn:

### ***Charge 1a***

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

The panel considered that, in light of it being established that Mr Sullivan's email was sent to Colleague A, it was content that Mr Sullivan did indeed send an email which stated '*I have been sent this by Queen Anne Hospital to complete*'.

The panel, as highlighted above, had already explored the origin and the trail of emails from Mr Sullivan's known email address. It noted that this is a factual matter, and a direct quote from the email it has had sight of.

In light of the above, the panel finds charge 1a proved.

***Charge 1b***

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

For the same reasons as highlighted in charge 1a, the panel also finds charge 1b proved.

***Charge 1c***

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

For the same reasons as highlighted in charge 1a, the panel also finds charge 1c proved.

***Charge 1d***

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

The panel noted that, although Mr Sullivan has not explicitly stated within the email itself that he was the Hospital Director, his email signature clearly purports that he was. The panel has heard and seen evidence from witnesses that this was not the case, and Mr Sullivan was never employed in such a role.

In light of the above, the panel therefore finds charge 1d proved.

**Charge 2**

*That you, a Registered Nurse:*

*2) Your actions in charge one were dishonest as you provided details within an email you sent to Colleague A which you knew were false.*

**This charge is found proved (in part).**

The panel considered charges 1a to 1d in turn in respect of charge 2:

***Charge 1a***

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

The panel was satisfied that Mr Sullivan was not sent the form by QASMC to complete, and it would have been clear in his mind that this was not the case.

The panel received a supplementary statement by Witness 1, which confirmed that the reference form from Elysium was not sent to Mr Sullivan's personal email address. The panel has seen evidence in relation to which email address the reference form was actually sent to, which was QASMC.

The panel considered that Mr Sullivan would have known that, as a matter of policy, references would have been completed by HR or an employee's direct line manager, and Mr Sullivan worked in neither role. The panel heard evidence regarding the recruitment procedure which confirmed this was the case.

Mr Sullivan worked in an entirely different field, namely theatre recovery, and Colleague A worked in facilities. The panel also highlighted that Mr Sullivan was no longer working for QASMC at the time he sent this email.

The panel considered that an ordinary decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 2 proved, in respect of 1a.

### ***Charge 1b***

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

The panel heard evidence that the organisation has changed its name and was taken over, albeit the location remained the same. The panel heard evidence from Witness 3 around the change of ownership of the premises, and that the employer had changed and employees were paid by a different company.

The panel considered that the statement as charged in 1b would therefore technically not be an incorrect statement to make at the time, nor would he have been dishonest in the circumstances.

The panel considered that, on the basis of the information above, an ordinary, decent member of the public would understand that this may have caused some confusion to Mr Sullivan. The panel therefore finds charge 2 not proved, in respect of 1b.

### ***Charge 1c***

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

The panel heard evidence from witnesses that QASMC would not have refused to complete a reference for any employee, in accordance with their policy. The panel heard evidence that this did not change following the transfer of ownership. The panel

considered that Mr Sullivan would have been aware that references could only come from HR or an employee's direct line manager, which he was not.

The panel considered that there is no foundation for the statement Mr Sullivan made as charged, and no evidence that QASMC refused to provide a reference for Colleague A.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore, in light of the above, the panel finds charge 2 proved, in respect of 1c.

### ***Charge 1d***

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

The panel heard evidence from Witness 2 and Witness 3 that Mr Sullivan was never employed as a Hospital Director, and he was always originally employed as a deputy theatre manager and subsequently as a recovery nurse.

The panel took account of the email by Witness 3, dated 3 October 2019, which clearly states:

*'In this instance the information below has been falsely provided... [Mr Sullivan] is not the Hospital Director nor has he ever held that position within our hospital.'*

The panel also heard oral evidence from Witness 3 that there is no such job title within the organisation.

The panel considered that Mr Sullivan would have clearly known that he was not a Hospital Director. It also noted again that Mr Sullivan was not even employed with QASMC at the time he sent that email.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore, in light of the above, the panel finds charge 2 proved, in respect of 1d.

### **Charge 3**

*That you, a Registered Nurse:*

- 3) *On or before 26 September 2019 you completed a typed reference for Colleague A which stated:*
  - a) *Dates of employment from 17th April 2017 to 5th August 2019;*
  - b) *That your job title was a senior manager;*
  - c) *“Her attention to detail proactive attitude and ability to communicate with all members of the multi professional team are extremely strong.”*

**This charge is found proved in its entirety.**

The panel considered the email trail in regard to Colleague A sending a typed reference to the HR Officer on 25 September 2019. The panel heard evidence from Witness 1 that the email sent by Mr Sullivan (albeit undated) goes together with the typed reference, and that he had completed it.

### **Charge 3a**

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

The panel considered charge 3a is a factual matter. It noted that it is clear from the reference that Mr Sullivan states Colleague A's dates of employment were '*17<sup>th</sup> April 2017 till 5<sup>th</sup> August 2019*'.

Therefore in light of the above, the panel finds charge 3a proved.

### **Charge 3b**

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

The panel considered charge 3b is a factual matter. It noted that it is clear from the reference that Mr Sullivan stated he was a 'Senior Manager' within his email signature at the bottom, in addition to including his personal email which the panel have established indeed belongs to him.

The panel was satisfied that Mr Sullivan was never a Senior Manager. It noted that initially he held the post of Deputy Theatre Manager, but noted evidence that this was not a senior management role.

Therefore in light of the above, the panel finds charge 3b proved.

### **Charge 3c**

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

The panel considered that the quote as charged in 3c is a direct quote from the reference Mr Sullivan provided.



Therefore in light of the above, the panel finds charge 3c proved.

#### **Charge 4**

*That you, a Registered Nurse:*

4) *On or before 1 October 2019 you completed a reference form for Colleague A which stated:*

a) *That she was a personal assistant;*

b) *Dates of employment from 17th April 2017 to 5th August 2019;*

c) *Indicated good for all elements of Colleague A's experience and / or work ethic.*

d) *That your job title was a senior manager.*

**This charge is found proved in its entirety.**

The panel considered the reference form, which is dated 1 October 2019, and it is clear from this form that Mr Sullivan was the person who completed it, as it provides his full name in addition to an electronic signature.

#### **Charge 4a**

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

The panel considered that the reference form clearly states Colleague A's position as being '*Personal Assistant/Receptionist*' under the job title box.

Therefore in light of the above, the panel finds charge 4a proved.

***Charge 4b***

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

The panel considered that the reference form clearly states Colleague A's dates of employment as being 17 April 2017 to 5 August 2019.

Therefore in light of the above, the panel finds charge 4b proved.

***Charge 4c***

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

The panel considered that the reference form clearly states that Mr Sullivan has indicated and ticked 'good' for all elements of Colleague A's experience and/or work ethic.

Therefore in light of the above, the panel finds charge 4c proved.

***Charge 4d***

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

The panel considered that the reference form clearly states that Mr Sullivan has indicated his position as being a 'Senior Manager', when this was not the case.

Therefore in light of the above, the panel finds charge 4d proved.

## **Charge 5**

*That you, a Registered Nurse:*

- 5) *Your actions in charge three and four were dishonest as you provided details within a reference form and/or a typed reference for Colleague A that you knew were false.*

**The charge is found proved in its entirety.**

The panel took charges 3a to 3c and 4a to 4d in turn, in relation to charge 5:

### ***Charge 3a***

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

The panel have heard evidence that Mr Sullivan was a close friend of Colleague A, and so it is likely that he knew that the dates he provided for her employment were incorrect.

The panel heard evidence from Witness 3 that Colleague A was employed 15 March 2019 to 13 June 2019, which contradicts what Mr Sullivan stated in the reference. Witness 3 also confirmed this in writing within an email, dated 3 October 2019.

The panel also considered that Mr Sullivan had already resigned as a theatre recovery nurse in February 2019, and returned as a bank nurse on 3 May 2019. It considered that there is nothing that would led Mr Sullivan to believe that Colleague A would have been

employed since 2017, when also taking into account that he commenced his employment before Colleague A.

The panel considered that Mr Sullivan would have known that this was not correct, given the circumstances, and an ordinary, decent member of the public would consider this to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 3a.

### ***Charge 3b***

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

The panel considered that Mr Sullivan was never employed as a Senior Manager at the organisation, and it has heard evidence which confirms this.

Mr Sullivan would have clearly known what his job title was.

For the same reason as highlighted previously in charge 3b, the panel considered that an ordinary, decent member of the public would consider this action to be dishonest.

Therefore in light of the above, the panel finds charge 5 proved, in respect of 3b.

### ***Charge 3c***

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

The panel considered that Mr Sullivan did not work in the same department as Colleague A, and he was not her direct line manager, so even if he were authorised to provide a

reference (which he was not), he would not have had the knowledge to grade Colleague A's competency in that way.

The panel has heard evidence that Mr Sullivan and Colleague A were close friends, and so it would have been likely in the circumstances that Mr Sullivan would have known about Colleague A not passing her probationary period.

Witness 2 and Witness 3 gave direct evidence stating that this quote from Mr Sullivan was dishonest.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 3c.

#### ***Charge 4a***

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

The panel has heard evidence from Witness 2 and Witness 3 that Colleague A was not employed as a Personal Assistant, and her job title was Medical Receptionist / Administrator.

The panel considered that Mr Sullivan was dishonest, as he completed a reference for Colleague A, in relation to a job title she never had in the first place, and he would have been aware of this.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 4a.

### **Charge 4b**

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

The panel has seen and heard evidence that Colleague A was employed from June to August 2019, and not 17 April 2017 to 5 August 2019.

The panel noted that Mr Sullivan and Colleague A were close friends, and so he would have known of her correct employment dates, especially when considering he commenced his employment before Colleague A joined.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 4b.

### **Charge 4c**

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

The panel considered that Mr Sullivan knew his actions as charged in 4c was out of his remit and he was not in a position to provide this feedback about Colleague A. As stated previously, Mr Sullivan would have been aware that Colleague A did not pass her probationary period, which is in direct contradiction to the grading given by him regarding her competencies, on the proforma reference.

For the same reasons above in charge 3c, the panel considered that Mr Sullivan's actions were dishonest.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 4c.

#### ***Charge 4d***

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

The panel considered that, for the same reasons above as highlighted in charge 3b, Mr Sullivan's actions were dishonest.

The panel considered that an ordinary, decent member of the public would consider this action to be dishonest. Therefore in light of the above, the panel finds charge 5 proved, in respect of 4d.

#### **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 Mr Sullivan'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, Mr Sullivan's fitness to practise is currently impaired as a result of that misconduct.

### **Submissions on misconduct**

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

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

Mr Brahim identified the specific, relevant standards where Mr Sullivan's actions amounted to misconduct. He provided written submissions, which are as follows:

#### **'Misconduct**

1. *Misconduct is a matter for the Panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says:*

*"misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."*



2. *In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:*

*'it connotes a serious breach which indicates that the doctor's fitness to practise is impaired.'*

3. *Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that:*

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

4. *Although the following charges were not proven:*

*1b;*

5. *The NMC submit that the remainder of other charges being found proved, amount to misconduct. The following submissions are collectively made in respect of the proved charges:*

- a. *The Registrant has shown a disregard of following procedure when it comes to references for colleagues. As evidenced by NMC witnesses there was a set process for providing such documents and the Registrant's deliberate actions of circumventing these is an act or omission that falls short of what would be proper in the circumstances;*

- b. *The Registrant had not been in a professional position to observe and comment on Colleague A's performance and therefore his grading of her as "good" in all elements was false. This is supported by the notion that she did not pass her probation and such this dishonest representation connotes a serious breach;*

- c. *The Registrant sought to deceive the reader by representing himself as holding a position that was not true and as witnesses also suggested - it simply not possible. Such a ranking of “senior manager” or “hospital director” would have loured others into believing false information because of the trust that comes with such seniority. This breach of trust is contrary to the rules and standards required to be followed by a medical practitioner;*
  - d. *The Registrant went about completing three forms of false representation – a reference in September 2019, an email in October 2019 and a form in 2019. This shows a consistent attempt to maintain his lies and even challenge when his untruthful content was not accepted. This is serious conduct that would be regarded as deplorable by fellow practitioners.*
6. *The NMC say that the following parts of The Code have been breached, but of course the Panel is able to consider any other parts as it sees fit (note that it is the 2015 version of the Code that applies in this case):*
- 4 *Act in the best interests of people at all times;*
  - 7 *Communicate early;*
  - 8 *Work cooperatively;*
  - 11 *Be accountable for your decisions to delegate tasks and duties to other people;*
  - 19 *Be aware of, and reduce as far as possible, any potential for harm associated with your practice;*
  - 20 *Uphold the reputation of your profession at all times;*
  - 21 *Uphold your position as a registered nurse, midwife or nursing associate;*
  - 25 *Provide leadership to make sure people’s wellbeing is protected and to improve their experiences of the health and care system.*

7. *Overall, the NMC further submits that the Registrant's actions as proven fall far short of what would be expected of a Registered Nurse. The public would expect that the profession will have staff that uphold a professional reputation. The Panel may find that most in breach are that of "20" and "21" above. The Registrant has clearly put into question the process of employing individuals this will have an overall effect of the public's trust in the medical profession. The Registrant has also put his own practice into question as to whether he can be trusted with any registered role within the medical profession.*
  
8. *The NMC therefore invite the Panel to find misconduct.*

### **Registrant's latest position**

9. *The Registrant was not present or represented throughout the hearing. The Registrant provided a very limited, if not insufficient, response to the charges by way of correspondence.*
  
10. *The NMC would submit that it is difficult to address an attitudinal concern such as dishonesty and the Registrant has not attended or at least provided an up-to-date reflective document and/or insight into these allegations. The NMC would submit that the Panel have insufficient information to argue against the finding of misconduct and impairment.*

### **Submissions on impairment**

Mr Brahimi 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 Brahim provided written submissions, which are as follows:

**Impairment**

*11. Current impairment is not defined in the Nursing and Midwifery Order of the Rules. The NMC have defined fitness to practise as the suitability to remain on the register without restriction.*

*12. The Panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant [2011] EWHC 927 (Admin):*

*“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:*

- (i) Has in the past, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;*
- (ii) Has in the past, and/or is she liable in the future to bring the profession into disrepute;*
- (iii) Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;*
- (iv) Has in the past, and/or is she liable in the future to act dishonestly.”*

13. As further stated at paragraph 74 of Grant, the Panel should:

*“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.*

14. The NMC say that the Registrant is impaired and that all four limbs of Grant are engaged in this case.

15. The first limb is engaged as a result of the Registrant putting future patients in unwarranted risks of harm. The Panel have accepted the evidence in respect of the charges proven and it follows that individuals were put at risk of harm where (but not limited to):

- a. *The Registrant’s could have put future patients at risk should Colleague A’s application have been successful, as she could have then been responsible for patient organisation while insufficiently experienced (as a result of the deceit);*
- b. *The Registrant may have also been responsible in delaying the need for a genuine personal assistant that Elysium were in need of – all of which went towards the process of patients being treated.*

16. The second limb is engaged as a result of the Registrant’s behaviour, as found proven, plainly brings the profession into disrepute:

- a. *It is unacceptable that any individual engages in such behaviour and repeats it over a period of time. Members of public may lose confidence of whether staff have been genuinely employed upon learning of this conduct – the same staff that could be treating them. Employers are also put on edge as to whether they*

*can trust references being produced for potential employees. This behaviour has plainly brought the profession into disrepute.*

*17. The third limb is engaged, where the Registrant has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:*

- a. Work cooperatively (8.1 and 8.6);*
- b. Uphold the reputation of your profession at all times (20.1 and 20.2);*
- c. Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system (25.2).*

*18. The fourth limb is engaged as a result of the Registrant's having been found proven of acting dishonestly. The Panel have accepted that the Registrant did misrepresent the true status of patients (but not limited to):*

- a. This kind of behaviour presents a risk to future patients because the misrepresented abilities of potential new employees may mean that they receive insufficient care due to false experience;*
- b. The medical professional is also put into question where future employers, such as those in these proceedings, may be less inclined to hire genuine people as a result of receiving false information, as heard in these proceedings. Dishonestly is a difficult behaviour to tackle and where there is insufficient material to say this has been addressed, the Registrant is liable in the future to act dishonestly.*

*19. As further stated at paragraph 74 of Grant, the Panel should:*

*“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.”*

*20. The NMC submit that there is a serious departure from the standards expected of a nurse and that the behaviour is incompatible with ongoing registration. The Panel should consider impairment on the following grounds:*

**21. Public protection**

- a. There is a real risk of harm in this instance where the Registrant attempted multiple times to deceive Colleague A’s new employer to accept her application. The Panel has heard that some of this conduct affected the level of care patients were receiving, had Colleague A been accepted into the role.*
- b. There is a risk of repetition given there are at least 3 attempts of false information (two emails and a form) and this happened over a period of time. Subcategorised are multiple misrepresentations such as the type of employee Colleague A was, the seniority of the Registrant and the false instruction (authority) he had received to complete the reference. There is no isolated incident but an individual who appears to have shown behaviour that was repeated until he was brought to the attention of the regulatory body.*

**22. Otherwise in the public interest**

- a. A member of public’s confidence in the medical profession would be deeply undermined as, upon learning about these charges, they would have doubts about how medical professionals behave within the workplace, in particular questioning the genuine employment of individuals within a medical setting. The Registrant’s behaviour towards the employment and reference process, suggest that there are fundamentally harmful and underlying attitudinal*

*concerns. This conduct extends to more than just a false reference and rather, it is clear example of a breach of trust. This breach not only undermines the trust employers extend to referees but also raises concerns for staff and patients that may now question whether those around them are genuinely employed. As a result of the Registrant's abuse of position, the NMC submit that the honesty and integrity of the medical profession has been challenged and evidently been put into disrepute.*

*23. As such the NMC invite the Panel to find that the Registrant is currently impaired.'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Doughty V General Dental Council* [1988] AC 164,173, *Cohen v General Medical Council* [2008] EWHC 581 (Admin), and *Council for Healthcare Regulatory Excellence V NMC and Grant* [2011] EWHC 927 (Admin).

## **Decision and reasons on misconduct**

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code. In doing so the panel took into account that the facts found proved against Mr Sullivan do not relate to his clinical practice. Nonetheless, the panel is satisfied that misconduct extends beyond clinical practice and any serious breach of the standards required of a registered nurse may amount to misconduct.

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

### **'8      *Work cooperatively***



*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*

**20.3** *be aware at all times of how your behaviour can affect and influence the behaviour of other people*

**25** ***Provide leadership to make sure people's wellbeing is protected and to improve their experiences of the health and care system***

*To achieve this, you must:*

**25.1** *identify priorities, manage time, staff and resources effectively and deal with risk to make sure that the quality of care or service you deliver is maintained and improved, putting the needs of those receiving care or services first'*

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

The panel took each of the charges in turn when deciding on misconduct:

*Charge 1*

The panel considered that Mr Sullivan would have been aware of the rules and procedures regarding providing a reference, the importance attached to references and the potential consequences of an inaccurate reference in a healthcare setting. The fact that Colleague A was not applying for a clinical post does not detract from the seriousness of Mr Sullivan's dishonesty. The position Colleague A applied and in respect of which the reference was provided was a responsible post involving access to patient records, staff records and confidential information more generally. In imparting false information when he was neither authorised to do so, nor in a position to provide accurate information regarding Colleague A's competencies, Mr Sullivan's behaviour was dishonest and wholly inappropriate. The panel heard evidence that Mr Sullivan and Colleague A were close friends. However, Mr Sullivan had been a senior nurse at the QASMC, from whom high standards were expected. The panel considered that he would have been well aware that he should not have been providing a reference for Colleague A and that he would have been well aware that the reference he did provide was false and misleading. Furthermore, at the time the reference was written and the email sent. Mr Sullivan was no longer employed by QASMC, and he would have been aware of what his role was and the limits he could work within.

The panel considered that Mr Sullivan's actions fell far short of what was expected of a registered nurse, and found that his actions in charge 1 (with the exception of charge 1b) were serious breaches of the code and amounted to misconduct.

### *Charge 2*

The panel considered that, for the same reasons above in relation to charge 1, the panel found that Mr Sullivan's actions in charges 2a, 2c and 2d amounted to misconduct.

The panel considered that Mr Sullivan sought to misrepresent himself and was dishonest in indicating that he was a Hospital Director, when he was never employed in such a role. The panel considered that he would have been well aware that a reference coming from a Hospital Director would carry significant weight and would have had the potential to

positively influence a prospective employer. Mr Sullivan clearly knew this to be the case and was, or should have been acutely aware of the seriousness of his actions and the potential implications.

The panel considered that Mr Sullivan's actions fell far short of what was expected of a registered nurse, and that his dishonesty was at the more serious end of the scale. The panel found that Mr Sullivan's actions in charge 2a, 2c and 2d amounted to misconduct.

### *Charge 3*

The panel noted that Mr Sullivan and Colleague A were close friends, and so as highlighted previously, Mr Sullivan would have been aware that Colleague A did not pass her probation period. He would have also been aware of the dates Colleague A was employed to and from, especially knowing that he commenced his employment before her. The panel heard evidence that references could only be provided by HR or a line manager of an employee, both of which Mr Sullivan was not, and therefore he was not in a position to provide the information as charged.

The panel considered that Mr Sullivan's actions fell far short of what was expected of a registered nurse, and found that his actions in charge 3 amounted to misconduct.

### *Charge 4*

The panel considered that it's reasons for charge 4 are similar to that in charge 3.

The panel considered that, for the same reasons as those highlighted in charge 3, the panel found that Mr Sullivan's actions in charge 4 amounted to misconduct.

### *Charge 5*

The panel considered that Mr Sullivan's actions fell far short of what was expected of a registered nurse, and that dishonesty is very serious. For the same reasons as those highlighted in charge 2, the panel found that Mr Sullivan's actions in charge 5 amounted to misconduct and were at the serious end of the scale.

To conclude, and when taking all of the charges individually and cumulatively, the panel found that Mr Sullivan's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

### **Serious misconduct**

Following its finding of misconduct, the panel went on to decide if Mr Sullivan's actions amounted to serious misconduct. It took account of the NMC's guidance.

The panel noted that the concerns did not relate to any clinical matters in this case. The dishonesty relates to a non-clinical post that Colleague A had applied for, and she was not a nurse. However, the panel considered that Colleague A would have had potential contact with vulnerable patients in such a role, and have access to confidential patient information.

The panel considered that Colleague A was a close friend to Mr Sullivan, and his actions were premeditated. This was a continuous action over a number of days, during which Mr Sullivan variously misrepresented himself as a Hospital Director and a Senior Manager. The panel agreed with Mr Brahimi's submissions, in that although the incidents occurred within a short period of time, Mr Sullivan repeated his behaviour to reinforce his first attempt at providing a reference for Colleague A.

The panel heard clear evidence from Witness 1 that indicated the potential risk relating to patient safety by recruiting somebody with a false reference. The panel considered that there was a potential unwarranted risk of harm posed to patients in the circumstances.

In light of the above, the panel therefore decided that all the charges found proved amounted to serious misconduct on the part of Mr Sullivan.

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

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

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

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

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

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

*'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or*

*determination show that his/her/ 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 considered that all limbs of *Grant* are engaged in this case.

The panel finds that patients were put at risk of harm as a result of Mr Sullivan's misconduct, in that had Mr Sullivan's reference been accepted, there was potential for Colleague A to be appointed to a position of trust with access to patient records. Further, the panel heard evidence that she had no experience in the role she applied for and her competence in general was in question to the extent that she had not passed her probationary period. Mr Sullivan would have known this. Further the panel is satisfied that Mr Sullivan's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that Mr Sullivan has not engaged with the NMC since 2019 in relation to these proceedings, and he has not provided any evidence that is indicative of any reflection, insight or remorse in respect of his actions. There is no evidence before the

panel that Mr Sullivan has made attempts to address the concerns, nor the impact they could have had on patients, colleagues and the public. In the absence of any such information before the panel, there remains a risk of harm and a risk of repetition in this case.

The panel considered that there would have been an unwarranted risk of harm posed to patients in this case, as Colleague A would have been in contact with vulnerable patients and had access to medical records, should she had been recruited for the role Mr Sullivan provided a reference for. The panel heard evidence by Witness 1 of the risk this could have on patient safety, if someone was recruited for a role with a false reference being provided.

The panel is of the view that there is a risk of repetition when considering Mr Sullivan's actions, as Mr Sullivan reinforced his dishonesty in his initial email by continuing it in a further email and the proforma reference for Colleague A, providing information which he would have known was untrue.

Therefore in light of the above, the panel 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, as a well-informed member of the public would be shocked to learn of Mr Sullivan's actions, especially when considering his previous position of seniority as a Deputy Theatre Manager. 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 Mr Sullivan's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Sullivan'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 Mr Sullivan off the register. The effect of this order is that the NMC register will show that Mr Sullivan 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**

Mr Brahimi informed the panel that in the Notice of Hearing, dated 25 May 2023, the NMC had advised Mr Sullivan that it would seek the imposition of a striking-off order if it found his fitness to practise currently impaired.

Mr Brahimi provided written submissions, which are as follows:

1. *The Panel have now reached a stage of finding misconduct in respect of the Registrant's behaviour and have concluded that his fitness to practice is currently impaired. The Panel should therefore consider what sanction is appropriate to address:*

- a. *The proven charges, including charges 2 and 5 with findings of dishonesty.*



2. *The Panel should first take into account relevant factors before deciding on sanction, as set out by the NMC Fitness to Practice Library guidance SAN-1:*
3. *Proportionality*
  - a. *Finding a fair balance between Registrant's rights and the overarching objective of public protection;*
  - b. *To not go further than it needs to, the Panel should think about what action it needs to take to tackle the reasons why the Registrant is not currently fit to practise;*
  - c. *The Panel should consider whether the sanction with the least impact on the nurse practise would be enough to achieve public protection, looking at the reasons why the nurse isn't currently fit to practise and any aggravating or mitigating features.*
4. *Aggravating features*
  - a. *Abuse of position of trust;*
  - b. *Multiple attempts of dishonesty;*
  - c. *Conduct could have put patients at risk of harm;*
  - d. *Striking lack of insight from the Registrant as to these concerns;*
  - e. *No up-to-date reflective documentation.*
5. *Mitigating features*
  - a. *First and only referral to the NMC;*
  - b. *Registrant has been qualified for 20 years.*

6. *Previous interim order and their effect on sanctions*

a. *The Registrant has not been subject to an Interim Order.*

7. *Previous fitness to practice history*

a. *None.*

**Sanctions available**

8. *NMC submit that taking no action and a caution order are not suitable options for this case due to the number and variety of concerns. Guidance is found at SAN-3a and 3b.*

a. *Taking no action: this would not be an appropriate course of action as the regulatory concern of dishonest behaviour is serious. The public protection and public interest elements in this case are such that taking no action would not be the appropriate response;*

b. *Caution Order: similarly, a Caution Order is also not suitable as this is a sanction aimed at misconduct that is at the lower end of the spectrum. In this case the concern involved multiple forms of dishonesty. Given the concerns, effective sanction is required.*

9. *With regards to a conditions of practice order (COPO), the NMC submit that this option does not adequately address and reflect upon the number of breaches in this case. NMC guidance is found at reference SAN-3c.*

a. *It is always difficult to formulate or consider such conditions that effectively deal with dishonest behaviour, which is an attitudinal problem in this case.*

- b. *The level of concern in this case would require a higher level of sanction than a COPO. The guidelines refer to “When conditions of practice are appropriate” and the Panel may find that these conditions are not met.*
- c. *Measurable, workable and appropriate conditions can be put into place to address instances such as clinical failures, however, a COPO would not suitably address dishonesty charges or the attitudinal and behavioural concerns that are implied by the lack of sufficient response from the Registrant.*
10. *The NMC submit the Registrant’s actions do warrant a suspension order (SO) but this would not be sufficient. Suspension guidance is found at reference SAN-3d, and includes some of the following (but not limited to):*
- a. *“Key things to weigh up before imposing this order include:*
- *whether the seriousness of the case require temporary removal from the register?*
- b. *“Use the checklist below as a guide to help decide whether it’s appropriate or not. This list is not exhaustive:*
- *a single instance of misconduct but where a lesser sanction is not sufficient”*
- c. *The seriousness of the regulatory concerns does warrant a temporary removal from the Register; however, the Registrant’s actions are not isolated but in fact a pattern of misconduct where he sought to argue against his own false representations not being accepted.*

d. *A suspension order will not address the concerns in this case or proportionately provide for an appropriate response to such serious charges.*

11. *The NMC submit that a striking-off order is appropriate in this case. The Panel may be assisted by guidance provided at reference SAN-3e. The NMC make the following submissions in response to the guidance:*

a. *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*

i. *The NMC submit that yes, they do. The charges found proven are those in the higher category of seriousness as per the guidance. There has been limited insight into these incidents and therefore not only is the misconduct itself raising fundamental questions about the Registrant's professionalism, but also the point that he has provided no explanation in addressing these concerns.*

b. *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate is not removed from the register?*

i. *The NMC submit that no, it cannot. There has been repeated conduct of similar nature. The public would be deeply concerned that the Registrant be allowed to remain on the register, in particular when taking into account the lack of insight.*

c. *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

i. *The NMC submit that yes, it is. As outlined in the guidance Panels "...will very often find that in cases of this kind, the only proportionate*

*sanction will be to remove the nurse, midwife or nursing associate from the register”. There is no further evidence that the Panel has read or seen which would justify pointing to a less severe sanction. A member of public may not understand why a less severe sanction is imposed and most likely not accept that it would be a true and proportionate measure in response to the proven charges.*

- d. *Given that the charges involve dishonesty, the Panel will also be assisted with guidance at reference SAN-2. This guidance says “In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve...” – the NMC would repeat the aggravating features above when assessing this guidance and further add:*
- i. *Deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients;*
  - ii. *Misuse of power;*
  - iii. *Premeditated, systematic or longstanding deception.*
- e. *The Registrant has not yet fully remediated the concerns raised. He has shown no evidence of reflection or remediation. The law about healthcare regulation makes it clear that a nurse, midwife or nursing associate who has acted dishonestly will always be at risk of being removed from the register. The actions of the Registrant are an abuse of trust. He has provided a false reference for an ex-colleague. He should not have provided a reference as we are told that HR carry out this action, let alone provided false details to a potential employer. Potential employers should be able to trust references that are provided by registrants, particularly with previous relevant experience.*

- f. *A striking off order should then be considered proportionate as the misconduct will raise fundamental questions surrounding the Registrant's trustworthiness and professionalism. Ultimately his actions will be considered incompatible with continued registration.*

**Sanction request:**

12. *The concerns in this case may be described as being attitudinal in nature. For all the reasons previously argued, the NMC submit that the appropriate sanction in this case is a:*

**Striking-off Order**

13. *The NMC have sought to assist the Panel by going through each of the possible sanctions and when weighing the evidence against the set guidance, it is justified that there be a striking-off order. When assessing the dishonest misconduct by the Registrant, it can be argued that this is behaviour that would be difficult to remediate and contrary to this, the Registrant has not provided any form of training or certificates. He has provided a character references. This is an attitudinal concern where the Registrant should be persuasively showing he has recognised his errors and corrected them. The Registrant has failed to do this. This sanction would reflect that the conduct of the Registrant has been properly addressed and maintain trust with the public that the NMC do take such allegations seriously and will take swift and appropriate action.*

14. *The NMC respect that the Panel is entirely at liberty to proceed as they deem most suitable for this case.'*

**Decision and reasons on sanction**

Having found Mr Sullivan'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:

- An abuse of position of trust;
- Continuous actions involving dishonesty over a short period of time, in relation to Mr Sullivan reinforcing his first attempt at providing a false and misleading reference for a colleague seeking a position of responsibility in the health sector;
- The conduct could have put patients at risk of harm;
- There is no evidence of reflection, insight or remorse from Mr Sullivan as to these concerns.

The panel also took into account the following mitigating features:

- Mr Sullivan has been qualified for 20 years;
- The panel has seen evidence that Mr Sullivan was a good nurse and that there are no clinical concerns present;
- Mr Sullivan's potential health matters.

The panel took account of the NMC's guidance, namely '*Cases involving dishonesty*', which states:

*'In every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct. Not all dishonesty is equally serious. Generally, the forms of*

*dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, especially if it could cause harm to patients*
- *misuse of power*
- *vulnerable victims*
- *personal financial gain from a breach of trust*
- *direct risk to patients*
- *premeditated, systematic or longstanding deception*

*Dishonest conduct will generally be less serious in cases of:*

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *incidents in private life of nurse, midwife or nursing associate'*

The panel particularly highlighted the bullet point relating to '*premeditated, systematic or longstanding deception*'. It considered that Mr Sullivan's actions were premeditated and subsequently repeated on a number of occasions, albeit over a short period of time. Mr Sullivan showed a determination in his attempts to deceive Colleague A's prospective employer. It considered that this was premeditation which was reinforced after the first email Mr Sullivan sent across, with another email and proforma reference for Colleague A.

The panel then went on to consider each sanction in turn, starting from the lowest available to it:

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, nor would it protect the public.

The panel 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 Mr Sullivan's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mr Sullivan'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, nor would it protect the public.

The panel next considered whether placing conditions of practice on Mr Sullivan's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the attitudinal nature of the charges in this case. The misconduct identified was not something that can be addressed through retraining, as there are no clinical concerns in this case, and it also involves multiple instances of dishonesty. Furthermore, the panel concluded that the placing of conditions on Mr Sullivan's registration would not adequately address the seriousness of this case and would not protect the public. There is also no evidence before the panel to suggest that Mr Sullivan would comply with such conditions, when considering his lack of engagement and the fact that there is no evidence of him being employed as a nurse since 2019.

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 this was not a single incident of misconduct as Mr Sullivan continued his actions, albeit over a short period of time, in order to reinforce his first attempt at providing a false reference for Colleague A, by providing another email containing false information and a proforma reference which was also false and misleading. The panel considered that there are clearly attitudinal concerns in this case, as Mr Sullivan sought to misrepresent himself on multiple occasions in relation to providing the reference. The panel have no evidence before it to indicate that Mr Sullivan has repeated his actions since the incident, however he has not engaged with the NMC since 2019.

The panel considered that a suspension order would protect the public for a period of time, but it would not mark the seriousness in this case, nor would it address the public interest especially when considering the level of dishonesty that has been found. The panel considered that dishonesty is more difficult to address, but there has been no evidence put before it that indicates Mr Sullivan has made any attempts to do so. There is no evidence before it to suggest that Mr Sullivan has shown any insight, reflection or remorse for his actions, nor has he addressed the concerns and the impact they could have had on patients, colleagues and the wider public. Mr Sullivan was once in a position of seniority at the Hospital, and as such he would have been aware of the relevant processes and policies in sending a reference. The panel considered that for Mr Sullivan to deliberately misrepresent himself on multiple occasions and deceive another organisation is wholly unacceptable.

The panel has also heard evidence from witnesses regarding Mr Sullivan's health at the time of the incidents. However, it has not had any medical documentation before it, nor anything from Mr Sullivan directly, to support this information.

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 Mr Sullivan's actions is fundamentally incompatible with Mr Sullivan remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

The panel considered that, when taking into account its previous findings, the concerns do raise fundamental questions regarding Mr Sullivan's professionalism, that public confidence could not be maintained if Mr Sullivan is not removed from the register and, a striking-off order is the only sanction that would be sufficient to protect the public and maintain professional standards.

Mr Sullivan's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with him remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mr

Sullivan's actions were serious and to allow him 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, and for the same reasons as above, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Mr Sullivan's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct himself, 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 Mr Sullivan 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 Mr Sullivan'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 written submissions provided by Mr Brahimi:

***'Interim order under Rule 24 (14) to cover possible appeal***

*Should the Panel make an order as to sanction beyond that of a caution, the NMC would invite that there be an interim order for a period of 18 months. The Panel will appreciate that the decision on sanction will not take effect until at least 28 days. The period of 18 months would therefore be sufficient should an appeal be lodged by the Registrant. The request and grounds argued for why an interim order is required would be the same as those previously presented at the misconduct and impairment stage. The Panel may agree that having no interim order would not be reflective of their finding that a sanction is required, beyond a caution.'*

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

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

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

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

That concludes this determination.