

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

Substantive Hearing

**Monday 12 June – Monday 19 June 2023
Tuesday 21 – Thursday 23 November 2023**

Virtual Hearing

Name of Registrant: Tracey Green

NMC PIN 83C0801E

Part(s) of the register: Registered Nurse - Sub Part 2
RN2: Adult Nurse - Level 2 (May 1985)

Relevant Location: North Somerset

Type of case: Misconduct

Panel members: Melissa D'Mello (Chair, Lay member)
Pamela Campbell (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Christopher McKay (12 – 19 June 2023)
Sanjay Lal (21 November 2023)
Peter Jennings (22 - 23 November 2023)

Hearings Coordinator: Monsur Ali (12 - 19 June 2023)
Anya Sharma (21 – 23 November 2023)

Nursing and Midwifery Council: Represented by Alastair Kennedy, Case
Presenter
(12 –19 June 2023)
Represented by Mary Kyriacou, Case Presenter
(21 – 23 November 2023)

Mrs Green: Present and represented by Christina Moller,
Counsel

Facts proved: Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, 2, 3, 4, 5a, 5b,
6, 7, 8, 10, 11a and 11b

Facts not proved: Charges 9a and 9b

Fitness to practise: **Impaired**

Sanction:

Suspension order (4 months)

Interim order:

No interim order imposed

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Kennedy, on behalf of the Nursing and Midwifery Council (NMC), to amend the wording of Charge 10.

The proposed amendments were to add the letter **a** before the word new and remove the letter **s** from the word residents. The proposed amendment would read as follows:

Allowed Annabel House Care Home (the Home) to admit **a** new-residents **resident** prior to the expiry of the quarantine period following the outbreak of COVID-19 at the Home.

Mr Kennedy submitted that the proposed amendments would provide clarity and more accurately reflect the evidence.

Ms Moller, on your behalf, did not object to the proposed amendments to the charge.

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

The panel decided to amend Charge 10 as requested. It was satisfied that the amendments were appropriate and could be made without injustice. The details of charges, with the amendments, are as follows:

That you, a registered nurse working at the Home:

- 1) Tested positive via a Lateral Flow Test (LFT) for COVID-19 at the start of your shift on 2 January 2021 and continued to work on the following days:
 - a) 2 January 2021
 - b) 3 January 2021
 - c) 4 January 2021
 - d) 5 January 2021

- e) 8 January 2021
- f) 10 January 2021
- g) 11 January 2021

2) Did not take a Polymerase Chain Reaction (PCR) test after your positive LFT on 2 January 2021

3) Did not self-isolate between 2 January and 11 January 2021

4) Did not record your positive LFT on 2 January 2021 on the Home's records

5) On 5 January 2021 told Person 1 words to the effect of:

- a) that you had taken a PCR test and were awaiting results
- b) Did not tell Person 1 that you had tested positive for COVID-19

6) Your actions in charge 5 above were dishonest in that you knew you had not taken a PCR test.

7) Deleted emails relating to COVID-19 test results from the managers email inbox.

8) Deleted emails relating to COVID-19 test results from the managers deleted files Folder.

9) Your actions in charge 7 and / or 8 above were dishonest in that:

- a) they were intended to avoid detection that you had tested positive for COVID-19
- b) They were intended to mislead and / or prevent others becoming aware of your positive COVID-19 test.

10) Allowed the Home to admit a new resident prior to the expiry of the quarantine period following the outbreak of COVID-19 at the home

11) Did not maintain an adequate record of LFT and/or PCR tests for:

a) Residents

b) Staff

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

The legal assessor, during closing submissions on facts, asked Mr Kennedy for clarification about Charge 6. Mr Kennedy said that Charge 6 should only be considered by the panel if it found Charge 5a proved. As a result of this, the legal assessor advised that the panel may wish to consider amending the charge to make this clear.

Ms Moller submitted that this had been discussed between Counsel previously, earlier in the hearing. She said that this would serve to clarify the charge. She also submitted that the change could be made without causing any unfairness to either of the parties.

Mr Kennedy agreed.

The panel accepted the advice of the legal assessor.

The panel was of the view that it was in the interests of justice and would not cause any unfairness to either of the parties, to clarify Charge 6. It determined that this amendment could be made under Rule 28.

Charge 6 would therefore be amended to:

6) Your actions in charge 5a above were dishonest in that you knew you had not taken a PCR test

Decision and reasons on application to admit witness statement and exhibits as hearsay evidence

The panel heard an application made by Mr Kennedy under Rule 31 to allow the witness statement and exhibits of Witness 1 into evidence. Witness 1 was not present at this hearing and, whilst the NMC had made efforts to ensure that this witness was present, she did not attend today.

Mr Kennedy submitted that Witness 1 was formerly employed at North Somerset Council (the Local Authority) but has since retired. The NMC has not had any direct contact with Witness 1. The Local Authority did not provide the NMC with Witness 1's home address, so it could not write to her. However, her email address was provided but this bounced back each time the NMC sent her an email. The Local Authority has been in contact with Witness 1 and she informed them that she is now living '*off grid*' and does not have a laptop to access her emails and that she would like to be left alone to enjoy her retirement. Mr Kennedy submitted that this is why Witness 1 is not in attendance.

Mr Kennedy also submitted that at the case conference, your representative was made aware of this issue, and it was agreed by way of your Case Management Form on 12 May 2023, that Witness 1's statement can be admitted into evidence.

Ms Moller informed the panel that she was made aware about the possibility of Witness 1 not attending the hearing and the likelihood of a hearsay application being made to adduce her statement into evidence. However, they had still hoped that Witness 1 might attend and that the NMC would continue to try to secure her attendance. Ms Moller submitted that she proposed some redactions to the witness statement at the case conference which have been completed. She submitted that she does not have an objection to the witness statement being admitted as hearsay evidence subject to the redactions.

Later in the hearing, Ms Moller also invited the panel to admit a screenshot of a text message from yourself to Witness 2.

Mr Kennedy did not object to these applications.

During the course of Witness 3's evidence, the panel requested Witness 3 to provide a copy of a document to which she had referred, namely, a contemporaneous note of her telephone conversation with you on 5 January 2021. The panel requested submissions from the parties on the admissibility of this evidence - Annabel House COVID-19 Care Home Questionnaire (the Questionnaire), dated 5 January 2021. Both Mr Kennedy and Ms Moller agreed that it was both relevant and fair to admit this into evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of these applications. This included that Rule 31 provides that, so far as it is '*relevant and fair*', a panel may accept oral, documentary or other evidence, whether or not it is admissible in civil proceedings.

The panel determined that Witness 1's statement was not the sole and decisive evidence on any charge as other witnesses provide information in relation to these matters. It also determined that the NMC had made reasonable efforts to secure Witness 1's attendance without success. The panel determined that Witness 1's wishes not to be involved in the hearing should be respected given that she has provided an NMC witness statement which is signed and dated.

The panel determined that the statement is clearly relevant and given that it has been redacted and your representative has no objection to the application to adduce it, it is fair to admit this into evidence. The panel therefore decided to admit Witness 1's statement and exhibits into evidence.

The panel also determined that the screenshot of the text message sought to be adduced by your counsel should also be admitted into evidence as it was relevant, and its admission does not cause any injustice to the parties.

The panel further determined that the Questionnaire, dated 5 Jan 2021, should be admitted into evidence as it was relevant, and its admission does not cause any injustice to the parties.

After closing submissions on the facts had been concluded, Ms Moller made an application to adduce further evidence. This comprised of a series of online newspaper articles and extracts from reports dealing with COVID-19. There was also a legal report. Ms Moller submitted that these articles were relevant because they went into explaining your state of mind in dealing with constantly changing government advice at the height of COVID-19 and the confused and anxious state of mind in which you found yourself. Your state of mind was particularly relevant when considering the allegation of dishonesty against you.

Ms Moller submitted that she was providing these articles as a background for the questions she had asked during cross examination.

Mr Kennedy was opposed to most of these online newspaper articles being adduced into evidence on the basis that they were media articles, and the source of the underlying information was unclear. Mr Kennedy did not object to one article which appeared to refer to dispensation over the Christmas period regarding LFTs.

The panel did not have sight of these documents.

The legal assessor stated that there was no formal application made for the admission of this evidence and much of the evidence was hearsay. Most importantly, it was at a very late stage in the process and that Mr Kennedy did not have sufficient time to consider the articles. There was no reason why the information could not have been provided well in advance of the hearing for the NMC to consider properly.

The panel noted that during the course of cross-examination of NMC witnesses by your representative, many of the issues apparently raised in the documents which Ms Moller sought to adduce at this late stage had been put to witnesses and they had the opportunity to agree or disagree with her assertions.

The panel was mindful of the provisions in Rule 31 which provide a wide discretion as to what evidence it can receive. It decided not to admit this additional information into evidence because it was very late, it was all hearsay and of limited relevance. The panel considered that the late admission of this evidence would be unfair to the NMC. In addition, the admission of this substantial amount of new evidence at such a late stage would seriously delay the progress of the hearing which was already behind schedule and may cause it to be part-heard to a date in the future.

In the light of this, the panel determined not to adduce the additional material into evidence.

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

Mr Kennedy made a retrospective application that where residents' names had been mentioned by a witness, those names should be marked as private on the transcript and anonymised to protect the identity and personal data of the residents. The application was made pursuant to Rule 19.

Ms Moller did not object to this application and submitted that the social worker's name that she had mentioned should also be marked as private and anonymised to protect their identity and personal data.

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 hold parts of this hearing in private where information of a private nature and residents' names are mentioned in order to preserve their privacy and ruled that the transcript should be marked retrospectively as private where names of residents and the social worker had been mentioned.

Background

You were first employed at the Home in 2014. On 12 August 2019 you became the manager of the Home. The Home has capacity to provide nursing care for up to 30 people above the age of 65. All residents have dementia and need a lot of assistance from the staff.

On 27 December 2020 there was an outbreak of COVID-19 at the Home. On 2 January 2021 you allegedly tested positive to COVID-19 and on 5 January 2021 during a routine telephone call with the Contract Compliance Officer in the Contacts and Compliance Team (Witness 3) at the Local Authority, you allegedly stated that you had completed a PCR test and were awaiting the results. You allegedly did not inform Witness 3 during the course of the call that you had received a positive LFT result three days prior and had not taken a PCR test.

In February 2021 the Care Quality Commission (CQC) received information from a whistle-blower that you had tested positive for COVID-19 in January 2021 but had continued to work at the Home, attending for shifts on seven occasions. During a subsequent unannounced inspection, you were alleged to have tested positive for COVID-19 on an LFT and did not self-isolate but continued to work at the Home. You said that your decision to continue working was due to extreme staff shortages and the inability to get cover from agency staff.

It is evident that between 2 to 11 January 2021 you did not self-isolate as you were at work. An examination of the records was carried out and there was no record of your positive LFT on 2 January 2021 or your PCR test result. However, there was no record of any such results in the email inbox and indeed there was no record in the deleted emails folder. It is alleged that the emails were deleted twice and could not now be retrieved. You asserted that there were paper copies of the results stored in the Home's files.

Due to the fact that there was an outbreak of COVID-19 at the Home, there was a moratorium placed on receiving new residents at the Home for a period of 28 days. An

examination of documents showed a new resident was admitted to the Home on 28 January 2021 which was during the quarantine period. It is accepted by you that you did not maintain adequate records for either residents or staff at that point in time.

On 11 February 2021, you sent an email to Witness 2 in which you resigned with immediate effect from your position as the Home Manager.

There was a full inspection carried out by the CQC which revealed shortcomings in the Home's management and as a result of that inspection, a referral was made to the NMC on 8 April 2021 by Witness 1 and that was followed by another referral by Witness 2 on 9 April 2021.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Moller, who informed the panel that you made full admissions to Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, 2, 3, 4, 5b, 7, 8, 10 and 11.

The panel therefore found Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, 2, 3, 4, 5b, 7, 8, 10 and 11 proved in their entirety, by way of your 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 Mr Kennedy and those made by Ms Moller.

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 took into account the documentary evidence provided by the NMC from:

- Witness 1: Senior Safeguarding Adult Officer at

the Local Authority at the time of the incidents.

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

- Witness 2: Former GP and former Managing Director and the Home owner at the time of the incidents.
- Witness 3: Contract Compliance Officer in the Contacts and Compliance Team at the Local Authority.
- Witness 4: Inspector of Adult Social Care at the CQC.

The panel also heard live evidence from the following witnesses called on your behalf:

- Witness 5: Director of Shreyas SAIN Ltd and the Registered Provider with CQC for The Manor House Nursing Home.
- Witness 6: CQC Registered Manager at The Manor House Nursing Home.

The panel heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It took into account the witness and documentary evidence provided by the NMC and by you and the submissions of Mr Kennedy and Ms Moller.

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

Charge 5

On 5 January 2021 told Person 1 words to the effect of:

- a) that you had taken a PCR test and were awaiting results.

This charge is found proved.

In reaching this decision, the panel took into account the evidence of Witness 3. It considered the Questionnaire dated 5 January 2021 which was completed by Witness 3. She had written '*Manager has done a PCR test on herself today.*' This was supported and consistent with Witness 3's oral evidence where she said that she had typed contemporaneous notes whilst on the phone with you. She had written down what you had said in response to her questions. The panel therefore attached particular weight to this document as being an accurate contemporaneous record. It could not ascertain why this sentence would have been included if it had not been said by you.

In response to cross-examination, Witness 3 also explained that this was a stand-alone sentence and that she had simply forgotten to put a full stop at the end of the previous sentence as she was typing quickly. However, she knew that it was a new sentence because it started with a capital letter. The panel noted that Witness 3 was subject to robust cross-examination by Ms Moller and maintained her position.

The panel determined that the evidence of Witness 4, in her Safeguarding alert form dated 8 February 2021, corroborated the evidence of Witness 3: '*...However, other information from PHE/LA from a meeting stated the manager had completed a PCR test on 05/01/21 and was awaiting results...*' Witness 4 stated during her oral evidence that this information came from her line manager who had a meeting with Public Health England and the Local Authority in December 2020/January 2021. Her manager attended regular meetings with these organisations to obtain updates regarding the COVID-19 situation.

The panel also considered your evidence. It noted that you stated in the regulatory response form dated 27 November 2021, '*... However, I have no reason to doubt their recollection... and wrongly informed SG that I had undertaken a PCR test.*' In your oral evidence, you were consistent in that you did not challenge Witness 3's account. You stated that you have known Witness 3 for many years and had a good relationship with her. You said that you had no reason to doubt her honesty and the accuracy of her account.

Having considered all the evidence before it, the panel found this charge proved on the balance of probabilities.

Charge 6

Your actions in charge 5(a) above were dishonest in that you knew you had not taken a PCR test.

This charge is found proved.

In reaching this decision the panel took into account the evidence of Witness 1 who stated in her written statement '*PHE records confirmed that there was no record of the Registrant taking a PCR test in January 2021.*'

The panel determined that you did not inform the CQC, the Local Authority, Public Health England or the Home owner about being positive with COVID-19. This is also borne out by the whistleblowing report received by the CQC where it is stated '*Our manager tested positive for covid 19 and did not self isolate and carried on working in the home her name is Tracey Green...*'

The panel applied the test for dishonesty in accordance with the judgement in the case of *Ivey v Genting Casinos UK Ltd* [2017] UKSC 67. The panel first considered the subjective belief held by you, whether you knew you had not taken a PCR test. It determined that you knew at the time that you had not taken the PCR test as evidenced

by Witness 4's witness statement: '*...She then stated that she did not take the PCR test for two weeks after her positive LFT because she knew it would be positive...*' You have also admitted to Charge 2 and confirmed in your oral evidence that you had not taken a PCR test.

The panel noted your response in the regulatory response form dated 27 November 2021 where you stated '*...However, I accept that I omitted information/gave false information to TC and SG on 5 January 2021 (at a time when I was in spiral of despair).*'

The panel determined that you knew you were COVID-19 positive because you had admitted in Charge 1 and that you took an LFT which was positive, and therefore you should have taken a PCR test. The panel has determined your genuine state of mind was that you knew that you had not taken a PCR test. The panel has already found that you told Witness 3 that you had taken a PCR test on 5 January 2021.

The panel further determined that an ordinary decent member of the public would expect a registered nurse in a position of trust to tell the truth and the fact that you did not tell the truth, means an ordinary person would consider this dishonest.

The panel found this charge proved on the balance of probabilities.

Charge 9

- a) Your actions in charge 7 and/or 8 above were dishonest in that: a) they were intended to avoid detection that you had tested positive for COVID-19.

This charge is found NOT proved.

Context for charge 9: charges 7 and 8

When considering Charge 9, the panel looked at each part of the charge individually and then collectively. First it considered Charge 9a in relation to both Charge 7 and

Charge 8 separately and then it considered the charges in relation to Charges 7 and 8 collectively. It did this for both Charges, 9a and 9b.

In respect of why you had deleted emails relating to COVID-19 test results, the panel heard your evidence that you routinely emptied the 'inbox' emails and 'deleted' emails file folders in order to prevent your computer from crashing and in order to delete private data promptly (for GDPR reasons) as other staff had access to the computer. You also stated that the computer did not have a hard drive.

You told the panel that you printed two copies of the COVID-19 email test results and stored one in the staff member's personnel file and that you gave one to give to the relevant staff member. You told the panel that staff members who tested positive needed the document you printed off to claim the £500 government allowance payable when isolating.

You told the panel that you had offered the files with paper records to Witness 4 but that she had been angry with you and refused to take them. You also said that Witness 4 had intimidated you. You had prepared numerous reflective pieces and written responses to these matters over the last three years and these assertions regarding Witness 4 were raised for the first time during the course of your oral evidence. Witness 4 was not afforded the opportunity to respond to these.

Witness 4's written evidence, consistent with her oral evidence, was that there were no paper records of the confirmation emails relating to staff COVID-19 PCR and LFT results. Witness 4's statement evidenced that you had told her that these emails were supposed to go into a dedicated COVID-19 folder but that these had not been kept.

The panel did not accept your evidence that Witness 4 had refused to take the paper records and preferred Witness 4's evidence that there were no paper records of the results. The panel determined that there was no reason for Witness 4 to refuse to look at documents proffered as part of an official CQC inspection.

Witness 4 gave oral evidence that she was surprised that the Managers' email inbox with COVID-19 results had been deleted in such a short time frame; she personally would have expected these results to be kept for around 12 months. The panel considered it improbable that, with 12 years' experience as a Registered Care Home Manager and 35 years' experience of record-keeping as a registered nurse, you would not have known that it was necessary to keep the records of staff COVID-19 PCR and LFT results for a reasonable period of time.

Therefore, the panel determined that you did not inadvertently delete the emails from the Manager's inbox and deleted files folder and that these emails were not printed out and stored.

Reasoning for charge 9

The panel did not have before it any cogent evidence of what was in the manager's email inbox and deleted files folder at the Home at the time of these incidents.

The panel considered that in order for there to be test results relating to you in the manager's inbox, you needed to have taken an LFT and/or a PCR test and for one or both of these to have been uploaded to the government website. In respect of the LFT you took, which was positive, you stated that you never uploaded that to the government website and the NMC did not adduce any evidence that you did. Therefore, in relation to the LFT there would not have been any record in the manager's email inbox.

In respect of the PCR test, it has been found proved that you did not take a PCR test after testing positive in an LFT on 2 January 2021. The NMC has not adduced any evidence that you took a PCR test after 2 January 2021. The panel determined that there is no evidence before it that you took a PCR test after testing positive on 2 January 2021 on your LFT, therefore there cannot be any information in the manager's email inbox in relation to PCR test.

The panel concluded that, if there was no information in the manager's email inbox about your positive COVID-19 tests on 2 January 2021, you could not have deleted information that was not there in order to avoid detection that you had tested positive for COVID-19. By the same reasoning, if there was nothing there about your positive COVID-19 test results on 2 January 2021, you could not have deleted emails from the manager's deleted files folder in order to avoid detection.

The panel therefore found that the NMC had not discharged the burden of proof and it determined that this charge was not proved on the balance of probabilities.

- b) They were intended to mislead and / or prevent others becoming aware of your positive COVID-19 test.

This charge is found NOT proved.

The panel did not have before it any cogent evidence of what was in the manager's email inbox and deleted files folder at the Home at the time of these incidents.

The panel determined that the rationale for finding this charge not proved is the same as Charge 9a. It accepted your evidence that you told all your colleagues at the Home that you had tested positive with COVID-19 on 2 January 2021 and you continued to work there.

The panel therefore found that the NMC had not discharged the burden of proof and it determined that this charge was not proved on the balance of probabilities.

Interim order

At the end of the hearing before the case went part-heard, the panel considered whether an interim order is required in the specific circumstances of this case to cover the period between now and until the resuming hearing dates in November 2023. 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 is in your own interests.

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

Submissions on interim order

The panel took account of the submissions made by Mr Kennedy. He submitted that you have never been, nor are you currently a subject of an interim order. Mr Kennedy submitted that the NMC does not wish to make an application for the imposition of an interim order at this stage.

The panel also took into account the submissions of Ms Moller. She submitted that it is not necessary to impose any kind of interim order. The only condition that may be thought appropriate is that you decline any offer to work as a manager. However, this is not necessary as you have no intention of doing so for the foreseeable future.

Ms Moller submitted that you apologised to the Home owner at an early stage, admitted most of the charges, remediated the concerns, developed full insight, and engaged with the authorities; you have given evidence to this hearing, and demonstrated that you are fundamentally honest, compassionate and a professional nurse, highly valued by your current employer in a role you find fulfilling and want to continue. You do not intend to work in a managerial role for the time being, but you are functioning well as a deputy manager.

Ms Moller further submitted that there has been no suggestion that any restriction is necessary to protect residents or other members of the public. There has been no decision yet in relation to misconduct or current impairment and submitted that an interim order is not required to maintain confidence in you or to uphold professional standards. You are content in your current role and need to earn a living, so being unable to practise as a registered nurse would not be in your own interests; it would cause reputational and financial loss.

Ms Moller submitted that you pose no future risk to the health, safety or well-being of residents or others and the panel must take account of the public interest in allowing a

good nurse to continue in safe practice. She therefore invited the panel not to impose an interim order.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest.

The panel was of the view that based on the information before it there is a risk of repetition and potential for significant harm to the public should you be permitted to practise without restrictions given the nature of the charges found proved. The panel noted that you had been a nurse for 35 years and a registered manager for 12 years at the time of the incidents which caused your referral to the NMC. However, you decided to attend work at the Home, having tested positive with COVID-19 at the height of a pandemic, breaching Home policies and government guidelines, placing colleagues and residents at potential risk of harm. You also failed to tell your employer, the Local Authority, Public Health England and the CQC that you had tested positive for COVID-19 and were continuing to work. You were dishonest about this in a conversation with the Local Authority. You did not maintain adequate records regarding residents and staff COVID-19 results as well as deleting COVID-19 emails from the Manager's inbox and deleted files folder. You also allowed the Home to admit a new resident prior to the expiry of the quarantine period following the outbreak of COVID-19 at the Home.

The panel determined that a fully informed member of the public would be concerned to know that a nurse who took a unilateral decision to work whilst COVID-19 positive is permitted to practise without restrictions. It also determined that the public confidence in the profession would be undermined if you were permitted to practise unrestricted in the interim pending the final determination of this matter.

The panel therefore concluded that some form of interim order is necessary on the grounds of public protection and is also otherwise in the public interest, in order to maintain confidence in the professions and in the NMC as regulator.

The panel next considered whether to impose an interim conditions of practice order. It heard live testimonials from two of your colleagues who spoke highly of you and stated that you are a good nurse who cares deeply for all her residents. The panel therefore determined that your general nursing skills are not called into question.

The panel is concerned that there is a risk that you could become a registered care home manager, which was the role that you held when you behaved in the manner described in the charges found proved. This is the scenario in which the risks identified above could be manifested.

In the light of this, the panel decided that there were workable conditions that could be formulated that would protect the public and address the wider public interest considerations in this case. As such, it has determined that the following conditions are proportionate and appropriate:

For the purposes of these conditions, 'employment' and 'work' mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, 'course of study' and 'course' mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must not work as a registered care home manager.
2. You must keep the NMC informed about anywhere you are working by:
 - a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
3. You must keep the NMC informed about anywhere you are studying by:

- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
4. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
5. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.
6. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The panel determined that this interim conditions of practice order should remain in place for a period of six months in order to address the identified risk during the intervening period between the hearing adjourning part-heard in the misconduct and impairment stage and resuming in November 2023.

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 amounted to misconduct and, if so, whether your 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 do amount to misconduct, the panel must decide whether, in all the circumstances, your fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

With regard to the question of misconduct, Mr Kennedy reminded the panel of the decision of the High Court in *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.*' The judgment adds, '*It is not any professional misconduct which will qualify. The professional misconduct must be serious.*'

Mr Kennedy invited the panel to take the view that the facts found proved amounted to misconduct and asked the panel to have regard to the terms of The Code: Professional standards of practice and behaviour for nurses and midwives 2018 (the Code) in making its decision.

Mr Kennedy identified the specific, relevant standards where the NMC says that your actions amounted to misconduct. He submitted that in this case there a number of paragraphs of the Code that can be invoked and these are as follows:

'Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

Work cooperatively

To achieve this, you must:

8.5 work with colleagues to preserve the safety of those receiving care

Recognise and work within the limits of your competence

To achieve this, you must:

13.4 take account of your own personal safety as well as the safety of people in your care

Always offer help if an emergency arises in your practice setting or anywhere else

To achieve this, you must:

15.3 take account of your own safety, the safety of others and the availability of other options for providing care.

Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working

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

To achieve this, you must:

19.3 keep to and promote recommended practice in relation to controlling and preventing infection, and

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

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'

Mr Kennedy reminded the panel that you were working in unprecedented times and in a very stressful situation but nonetheless, he submitted that your behaviour fell below the standards expected of a registered nurse. He said that despite the extraordinary circumstances, the charges show that as a nurse manager you were not prepared for an outbreak of COVID-19 in the Home despite the pandemic having been ongoing for nine months at the time. He said that you made wrong decisions, exposed other colleagues and patients to risk of harm, did not seek help and lied about your COVID-19 swab status.

Mr Kennedy submitted that your behaviour goes beyond the threshold of misconduct as you were a highly experienced Home Manager and familiar with the policies relating to COVID-19. Further, as a manager you should have had a contingency plan in place in the event of the possibility that you caught the COVID-19 virus. As a nurse you should have been aware of the risk of the possibility of passing on an extremely contagious virus. He said that you did not seek help when there was a crisis at the Home, and did not even tell the Home owner (Witness 2) about your COVID-19 status and about what you were doing, thereby, potentially exposing the Home owner to a financial risk. He

said you showed a lack of candour by lying to Witness 3 about your positive lateral flow test and resorted to dishonesty.

Mr Kennedy concluded his submissions by saying that your decision to carry on working following your positive LFT was a unilateral one and that your behaviour was multifaceted and sufficiently serious to amount to professional misconduct.

Ms Moller provided the panel with written submissions on misconduct which were supplemented by oral submissions.

Ms Moller submitted that you accept that your actions in January 2021 were very ill-judged but ask the panel to take account of the fact that your motivation was altruistic. You gained nothing financially and resigned within days of admitting your breaches to the Home owner and the CQC, indicating early insight into the gravity of the potential consequences.

Ms Moller further submitted that you accept that working in breach of COVID-19 regulations may be condemned by some health professionals and members of the public. As your actions took place in a work context, you recognise that your actions in January 2021 could be characterised as misconduct. However, those with recent experience of being unable to visit relatives may be grateful for your selfless commitment to the vulnerable elderly residents in the Home. Few would condemn your actions, although it is recognised that there will be a range of views.

Ms Moller submitted that, in the unprecedented circumstances in which you found yourself, in January 2021, any misconduct found should not be described as 'serious'. Several witnesses gave evidence supporting your belief that the residents would have been at risk, even if you had called the CQC, Witness 2 or Public Health England (PHE).

Ms Moller submitted that any conclusion that your actions did not amount to serious misconduct 'automatically' means that your fitness to practise is not impaired. It is only if the panel considers that the facts found proved constitute serious misconduct that

impairment should be considered. She submitted that most reasonable people would not condemn your actions in all the circumstances.

Submissions on impairment

Mr Kennedy 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. He made reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Kennedy submitted that the panel should consider your practice as a whole and that includes looking at past and future risks. The panel should take into account your past behaviour and decide on the basis of it and the information about what happened and what you did since then. The panel needs to consider the issue of public protection and the wider public interest and for this, Mr Kennedy referred the panel to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin). He further stated that the panel needs to take into consideration your remediation and insight when deciding on whether your fitness to practise is currently impaired.

Mr Kennedy reminded the panel that you exhibited a degree of insight as you had admitted the majority of the charges at a very early stage and you have produced reflective pieces. Further, you have acknowledged that some of your behaviour at the time was not to the required standard, but he asked the panel to consider whether this demonstrates that you fully understand how far the standard of your behaviour fell and the impact of it on the reputation of the profession, the patients and your colleagues.

Furthermore, Mr Kennedy submitted that there remains a risk of you repeating the misconduct because you are yet to develop full insight into your actions, and that dishonesty is difficult to remediate. He asked the panel to consider if it can be confident that you would not behave in this manner again should you find yourself in a stressful situation in the future.

Mr Kennedy submitted that a finding of impairment was also necessary in the wider public interest, to promote and maintain public confidence in the nursing profession and to promote and maintain proper professional standards and conduct for members of the profession. Mr Kennedy therefore submitted that given the incomplete insight, lack of full remediation and the risk of repetition, a finding of current impairment is required.

Ms Moller provided the panel with written submissions on impairment which were supplemented by oral submissions.

Ms Moller submitted that in determining impairment, the panel should consider whether or not the facts found proved indicate any risk of harm, breach of a fundamental tenet of the nursing profession, bringing it into disrepute, or dishonesty, in the past or likely in the future.

Ms Moller said that although you make no attempt to justify your actions, it could be argued that the benefits to COVID-19 positive residents of receiving care outweighed any potential risks of being exposed to another variant. If your actions are judged in context, the panel may consider that there was no breach of a fundamental tenet of the nursing profession. Nurses should generally put the care and well-being of patients before their own needs.

Ms Moller further submitted that if members of the public understood your predicament and motivation for staying on at work, it may be concluded that the profession would not necessarily be brought into disrepute. The needs of residents at the Home trumped any self-interest. Members of the public on hearing you give evidence may hope for a similarly dedicated nurse if they should ever need one, for themselves or their relatives.

Ms Moller submitted that you have developed significant insight by re-examining your actions in January 2021 and acknowledging consequent risks. There is no real possibility of future misconduct. Further, she said that you have reflected on your own accountability for actions in January 2021 and not sought to blame others. As time has passed, you have come to acknowledge that, despite horrendous circumstances, your approach was potentially risky and in breach of regulations and guidance. These events have had a significant impact on your whole career, reputation and life.

Ms Moller said that by resigning immediately, apologising and cooperating with all enquiries, you have sought to make reparation. Since January 2021, your attitude to regulations and nursing practice has continued to evolve through discussions with lawyers, managers and other colleagues. You have expressed deep remorse for any reputational damage to the Home or profession. Instead of trying to explain away or justify errors, you want to apologise unreservedly to residents, Witness 2, your colleagues, the CQC and the NMC.

Ms Moller invited the panel to find that you pose no future risk and to take account of the public interest in enabling a good nurse to continue in safe practice. Ms Moller adopted a neutral position in relation to misconduct. However, she submitted that your current fitness to practise is not impaired by reason of actions taken at a time of extreme crisis in January 2021, over two years ago.

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, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

‘Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

Work cooperatively

To achieve this, you must:

8.5 work with colleagues to preserve the safety of those receiving care

Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.1 raise and, if necessary, escalate any concerns you may have about patient or public safety, or the level of care people are receiving in your workplace or any other healthcare setting and use the channels available to you in line with our guidance and your local working practices

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

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

To achieve this, you must:

19.3 keep to and promote recommended practice in relation to controlling and preventing infection

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

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...

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

20.6 stay objective...

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. In reaching its decision, the panel considered whether individually and/or

collectively the facts found proved represented a serious departure from the standards expected.

The panel determined that the facts found proved in Charge 1 amounted to serious professional misconduct and fell far below the standards expected of a registered nurse.

The panel accepted that there was no financial gain or personal benefit to you to continue working whilst COVID-19 positive and that your intention may have been altruistic, and that you did what you thought was best for the residents and the Home. However, your unilateral decision to behave in the way you did and your failure to seek assistance put vulnerable residents and your colleagues at risk of harm. You did not seek to obtain informed consent from the residents, their relatives or your colleagues when you continued to work for the Home, attending shifts on seven days, whilst being COVID-19 positive. You were a highly experienced Home manager and should have taken the appropriate steps and adhered to the policies and guidelines, the purpose of which was to protect the nation.

The panel noted that you were well enough to send the text message to Witness 2 on 2 January 2021 informing him that the Home had hit a crisis point and may need to hire agency staff. Therefore, the panel did not accept the suggestion that you were not well enough to make correct decisions.

The panel determined that your conduct in Charge 2 amounted to serious professional misconduct and fell far below the standards expected of a registered nurse.

The panel determined that it was clear that you could not rely on an LFT result and that you had to do a PCR test which you should have done but failed to do so. Your failure to do the PCR test put residents, staff, the public and yourself at potential risk of harm. Further, you did not follow the government guidelines whilst being aware that you had to follow the necessary guidelines in order to keep the public safe. You stated that you did take the PCR test when you did not because you thought that this may show a positive COVID-19 test result.

The panel determined that the facts found proved in Charge 3 amounted to serious professional misconduct for the same reasons it provided for Charge 1.

The panel determined that the facts found proved in Charge 4 amounted to serious professional misconduct and fell far below the standards expected of a registered nurse.

The panel determined that you did not follow the Home's policies or the government guidelines on recording the COVID-19 positive test results and therefore you were in breach of your record keeping obligations at the Home. As an experienced nurse and Home manager, you would have known that keeping accurate records of something as important as this would be a key element of record keeping and that these were to keep the staff and the public safe at a time of serious health crisis. By not keeping a record, you put residents, your colleagues and the public at potential risk of harm. Additionally, you prevented the CQC and PHE from receiving an accurate record of what was happening at the Home in relation to staff COVID-19 status.

The panel determined that the facts found proved in Charges 5a and 6 amounted to serious professional misconduct and fell far below the standards expected of a registered nurse.

The panel determined that you knew that you had not taken a PCR test. It noted the hearsay evidence of Witness 1 who stated that there were no PHE records of you taking a PCR test in January 2021. Witness 1 wrote in the Local Authority report that Witness 3 spoke with you on 5 January 2021 and you confirmed that neither yourself nor the deputy had COVID-19.

The panel determined that you knew what you said to Witness 3 during the telephone conversation was untrue and therefore your conduct was dishonest. Further, you missed an opportunity to seek advice from the local authority during your conversation with Witness 3.

The panel determined that the facts found proved in Charges 5b amounted to serious professional misconduct and fell far below the standards expected of a registered nurse.

The panel noted that you should have told Witness 3 that you had tested positive for COVID-19. Testing positive for COVID-19 would have been a significant event for you, so the panel does not accept that it was something that escaped your mind during your conversation with Witness 3.

The panel determined that the purpose of the telephone conversation with Witness 3 was about the COVID-19 status of staff and residents and the impact on the Home. You tested positive three days prior to the conversation and therefore Witness 3 would have expected you to be open in the conversation but you did not demonstrate that in this instance. The panel heard from you that you had a good working relationship with Witness 3, had known her for a long time and had a trusting relationship. Therefore, there was no reason not to be frank with her and seek advice from her.

With regard to charges 7 and 8, given the nature of the Home and the residents at the time and given that the COVID-19 pandemic was ongoing, the panel was of the view that with your experience as a registered nurse, and as the Home Manager, you would have known the importance of audits and keeping accurate and positive results, not just for the Home, but also for the individual residents and the staff working there. You did delete the files within a short period of time, and you should have known that you needed to keep the files for a longer period of time. There was no paper trail although you had suggested in oral evidence that you had printed off the records and handed them to members of staff.

The panel also noted the following extract from Witness 1's witness statement:

' [You] acknowledged to me that deleting the contents of the manager's inbox was a mistake. [You] thought deleting the result emails would not be a big deal because all staff members who had tested positive had been informed. Additionally, [you] said that [you] thought there were copies of these in a Covid-19 file which [you] had set up, everything was supposed to go in there but [you] then found that they had not been put in there'

The panel concluded that your conduct in charges 7 and 8 fell far below the standards expected of a registered nurse and did amount to serious professional misconduct.

In relation to charge 10, the panel considered the following extract from Witness 1's witness statement:

'As a result of the Covid-19 outbreak at the Home in December 2020 and January 2021, the Home should not have admitted new residents during a quarantine period...'

The panel noted your admission to this charge. The panel considered that you were the Registered Home Manager and you should have followed the government health guidelines, and by not doing so you were putting a future resident at risk of contracting COVID-19 by allowing them to come to the Home before the expiry of the quarantine period following the outbreak of COVID-19 at the Home. The panel was of the view that this was serious as there were government guidelines that should have been followed.

The panel also considered the following extracts from Witness 4's witness statement:

'The record of admission of new residents to the Home was considered during the inspection. During the inspection we found two service users had been admitted to the Home. One on 28 January 2021...This was after the Covid-19 outbreak in the Home. The lack of an effective and reliable staff testing system placed them at risk of catching Covid-19.'

Government guidance states that an outbreak can be declared over once no new cases have occurred in the 28 days since the onset of symptoms in the most recent case, which is twice the incubation period. During this period, there should be no new admissions to the home unless supported by a risk assessment in consultation with the local authority and following the advice of local public health teams.'

The Local Authority considered the outbreak at the Home was over on 5 February 2021. Therefore, the service user admitted on 28 January 2021 was admitted within 28 days of the outbreak at the Home. We found no evidence that advice had been sought from the Local Authority or a risk assessment was put in place for the service user to mitigate any risk. This put the service user at risk of harm'

The panel concluded that your conduct in charge 10 fell far below the standards expected of a registered nurse and did amount to serious professional misconduct.

The panel noted your admission to charge 11. The panel considered the residents within the Home may have had underlying health conditions, and if there was no accurate record of LFT/PCR tests in the Home, this potentially put vulnerable residents at risk. As the Home Manager, you should have known the importance of doing this.

The panel considered the following extract from Witness 4's witness statement:

'Before the Covid-19 outbreak in the Home in December 2020 and January 2021, residents should have been tested monthly. Generally, the records show that residents were being tested, but the test dates were not clear and the results were not clear...'

The panel concluded that your conduct in charges 11a) and 11b) fell far below the standards expected of a registered nurse and did amount to serious professional misconduct, for the same reasons as in relation to charges 7 and 8.

Decision and reasons on impairment

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

The panel took into account all of the evidence it received, including the testimonial evidence and reflective statements provided at this stage of the hearing, together with

the submissions of counsel. It accepted the advice of the legal assessor, who advised it on the matters it should take into account and the approach it should take to the question of impairment.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

'The question that will help decide whether a professional's fitness to practise is impaired is:

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

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

The panel also had regard to the Fitness to Practise Library, in particular Insight and strengthened practice, Reference FTP-13 Last Updated 14 April 2021, which states:

When assessing evidence of the nurse, midwife or nursing associate's insight and the steps they have taken to strengthen their practice, decision makers will need to take into account the following questions:

- *Can the concern be addressed?*
- *Has the concern been addressed?*
- *Is it highly unlikely that the conduct will be repeated?*

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... show that his/her/ fitness to practise is impaired in the sense that S/He:

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

The panel finds that in the past, limbs a-d of the test are engaged. The panel finds that patients were put at an unwarranted risk of harm as a result of your misconduct. Your misconduct brought the nursing profession into disrepute and breached the fundamental

professional tenets of honesty and of reducing the potential for harm. The panel found that you have in the past acted dishonestly in relation to one instance.

However, on the particular facts of this case, the panel was of the view that, since the conduct took place in January 2021, you have developed sufficient insight into your misconduct and that your remediation into the regulatory concerns has been relevant, measurable and effective. In particular, the panel considered that through your oral evidence to the panel and your multiple, detailed reflective statements over the course of 2021 and 2022, you have demonstrated that you have recognised what you did was wrong and have developed an understanding of why it was wrong. At the outset of this hearing, you also made admissions to the majority of the charges. The panel was of the view that you appreciate what should be done differently in the future. It noted that you apologised for your actions in your reflective statements and throughout the course of the hearing: *'I remain deeply remorseful and ashamed of the potential harm that could have resulted'*. The panel took into account that you have always accepted responsibility and your reflective statements demonstrate that you have not sought to blame others, and this has also been reflected in your oral evidence to the panel.

You have engaged with the NMC throughout the process. In recognition of your misconduct, you have focused on strengthening your practice.

The panel was satisfied that the misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account that you have explained in your reflective statement that you have completed over 30 courses, including an online course in Disaster Planning which you undertook on 2 February 2021 and a confidence and assertiveness online training course with E-Careers commencing in 2022. The panel was of the view that the training courses which you have undertaken are relevant and demonstrate that you have made an active effort to reflect and remediate the concerns.

The panel also noted that you have been working as a deputy manager in a nursing home since November 2022. The panel took into account the positive testimonials and

oral evidence from Witness 5 (the Manor House Nursing Home's CQC Registered Provider) and Witness 6 (the Manor House Nursing Home's Registered Manager), who spoke specifically to your openness and honesty, as well as your accurate record-keeping.

Witness 6 stated in her witness statement dated 7 June 2023:

' [You are] the most honest, caring and hardworking nurse that I have had the pleasure to work with. In my opinion, It would be a huge loss to the nursing profession and a travesty for our home and the residents living in it should [you] not be able to remain practicing.'

Witness 6 stated in her witness statement dated 5 November 2023:

' Since June 2023 to now I have found [you] to be honest, reliable , shown integrity and demonstrated fantastic knowledge with [your] nursing skills... ensuring any issues or errors are brought to me in a timely manner. [You remain] a huge asset to the Home...'

Witness 5 spoke very highly of you in her witness statements and oral evidence.

In her witness statement dated 6 June 2023 she stated:

Through [your] practice, [you have] promoted a caring environment conducive to the physical, social, intellectual and spiritual needs of the residents and staff. [Your] holistic approach to care not only encompasses the physical well-being of a person but also the emotional. [You are] intuitive to the needs of [your] team and the residents. [Your] kind and obliging nature ensures the trust, willingness and eagerness of [your] staff to work to very high standards. This is reflected through the compliments we receive at the home regarding management receiving 5 out of 5 stars in this area consistently... As mentioned in my previous testimony, [you are] a rare gem in the nursing profession with qualities that are severely lacking in the younger generations...'

In her witness statement dated 6 November 2023 she stated:

'[You continue] to prove [yourself] through [your] work practices at [the Manor House Nursing Home] as a competent, honest and dutiful nurse, I stand by statements made that the allegation made against [you] are not a true representation of [your] nature and more so brought about by the very stressful circumstances that plagued all care home managers during the devastating impact of COVID. To judge [you] on decisions made at such a difficult time, under extenuating circumstances, in comparison to 35 years of flawless service, would be a great loss to the nursing profession.'

Witness 5 also said that you have put your assertiveness skills into practice and that you now know to work within your limits.

In her witness statement dated 6 June 2023, she stated:

'[You have] always been transparent in bringing to the attention of management any perceived shortcoming in our safety arrangements or any defects in work practice. [You do] not shy away from highlighting errors with me or the manager for the care and welfare of the home.'

The panel noted that during Witness 5's oral evidence, she provided a specific example of when you did not admit a resident where it was not appropriate to do so.

The panel was of the view that it is highly unlikely that the misconduct found will be repeated. The panel considered that you were faced with a unique and exceptional set of circumstances during the Covid-19 pandemic, along with the implementation of new Covid-19 rules and regulations at the time which have now been removed.

The panel considered that the single instance of dishonesty in this case was isolated to the context of the pandemic and that you had made it clear that you treat the welfare and well-being of residents as of paramount importance. Whilst looking after residents

during the Covid-19 pandemic, you developed very close relationships with them; you may have blurred your professional and personal boundaries and therefore your decision making became skewed, which may have led in part to the dishonesty. The panel noted that you have worked as a nurse for the past 35 years, and prior to these regulatory concerns you had an otherwise unblemished nursing career, which has been reflected in the positive employment testimonials from within a care home environment. The panel accepted that questions of dishonesty are difficult to remediate, but was satisfied in the exceptional circumstances of this case that you have demonstrated insight into your actions.

In the panel's view, you have sufficient insight and have fully strengthened your practice through the training courses you have undertaken, your detailed reflections and positive work testimonials over the last two years. The panel noted that you recognised that you needed to change the way you approach your work and that you needed to think objectively rather than subjectively. The panel was therefore of the view that if you were to find yourself faced with a similar situation in the future, you would be able to manage the situation differently, as you have learnt to be more open with your decision making and approach colleagues more readily.

The panel is therefore of the view that there is negligible risk of repetition and as a result decided that a finding of impairment is not necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety, and well-being of the public and patients, and also to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions.

Having regard to the above, the panel determined that a finding of impairment on public interest grounds is nevertheless required in order to uphold the standards expected of a registered nurse, in particular, the obligation on nurses to be honest and to adhere to proper professional standards and government guidance.

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 finds your fitness to practise impaired, but on the grounds of public interest alone.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of 4 months. As a result of this order, the NMC register will show that your registration has been suspended.

In reaching this decision, the panel had regard to all the evidence that has been adduced in this case and the submissions of counsel. It also had careful regard to the Sanctions Guidance (SG) published by the NMC.

The panel heard and accepted the advice of the legal assessor, who advised it on its powers under the Order and the principles it should apply.

Submissions on sanction

Ms Kyriacou submitted that the NMC's application is for a 12-month suspension order with a review. She set out that the panel in performing its sanction exercise should start with the least restrictive sanction, and if that sanction is not enough to maintain public confidence in the profession and the NMC as a regulator, then the panel should move to consider the next most serious sanction.

Ms Kyriacou referred the panel to various pieces of guidance found in the NMC Fitness to Practise Library, in particular Suspension Order, Reference SAN-3d, last updated 12 October 2018, which states that the panel may suspend the registrant where it finds that the misconduct is not fundamentally incompatible with the registrant continuing to be a registered professional and the overarching objective may be satisfied by a less severe outcome than permanent removal from the register.

Ms Kyriacou submitted that the key things to weigh up before imposing this order include whether the seriousness of the case requires temporary removal from the register and secondly, whether a period of suspension will be sufficient to maintain public confidence in the nursing profession and uphold professional standards.

Ms Kyriacou submitted that it is the NMC's position that the seriousness of the case does indeed require temporary removal from the NMC register, and that a suspension order would be sufficient to maintain public confidence in nurses and maintain professional standards.

Ms Kyriacou submitted that the panel should first consider the issue of dishonesty. She set out that the NMC Guidance states that honesty is of central importance to a nurse's practice and allegations of dishonesty will always be serious. She submitted that a nurse who has acted dishonestly will always be at some risk of being removed from the NMC register. However, in every case the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. The NMC Guidance states that generally the forms of dishonesty which are most likely to call into question whether a nurse should be allowed to remain on the register, will involve a direct risk to patients. This is relevant in this instance, as the registrant did place residents at risk of harm by her actions, particularly her dishonest actions.

Ms Kyriacou submitted that the factors that the panel may bear in mind in considering whether dishonest conduct is less serious include one-off incidents and no direct personal gain. She submitted that in this case, there has been no direct personal gain by you but the incident cannot be said to be a one-off as you continued to work, knowing that you had tested positive on multiple tests between 2 and 11 January 2021. In addition to this, you made a dishonest declaration in regard to the PCR testing, which you said that you had taken, but had not.

Ms Kyriacou submitted that throughout the period between 2 and 11 January 2011, you had the opportunity to follow the correct steps in respect of the government advice, but failed to do so. This placed residents at a risk of harm. Ms Kyriacou submitted that the panel has however found that the dishonesty was isolated to the context of the

pandemic and may consider that, in this respect, this could be capable of falling into the category of a one-off incident.

Ms Kyriacou set out the aggravating and mitigating features for this case.

Ms Kyriacou submitted that it is accepted by the panel that your actions fell far below the standards expected of a registered nurse. You knew what you were doing at the time when you said that a PCR test had been taken, in addition to admitting that you did not want to take the PCR test for two weeks, as you knew it would be positive.

Ms Kyriacou submitted that the panel will have noted that you were an experienced home manager. Given that the panel has found that your fitness to practise is currently impaired on public interest grounds, it is important to consider how an informed member of the public would view your actions, particularly the loved ones of those in care homes. She submitted that an informed member of the public would be shocked and concerned, particularly given what we know about what happened in care homes during the pandemic where loved ones could not visit those in care homes with fear of transmitting COVID-19.

Ms Kyriacou submitted that, notwithstanding your long standing and unblemished career, the panel may consider that, to maintain confidence in the profession and the NMC as a regulator and to maintain professional standards reflecting the serious nature of this case, the appropriate sanction may be a suspension order. She submitted that if the panel does not, however, consider suspension to be appropriate and proportionate, then it is open to the panel to consider a conditions of practice order or a caution order, the latter being appropriate if the panel wants to mark that the behaviour is unacceptable and must not happen again without imposing any restrictions on your nursing practice.

Ms Kyriacou set out that the NMC's application is for a 12-month suspension order with a review, but the panel must exercise its discretion and consider the most appropriate and proportionate sanction, taking into account both the aggravating and the mitigating features in this case.

Ms Moller referred the panel to, and expanded on, her written submissions on sanction:

1. *On the first day of this hearing [you] admitted Particulars 1, 2, 3, 4, 5b, 7, 8, 10 and 11 of the Charge. These were found proved without evidence being heard.*
2. *[You] did not admit the allegations of dishonesty at Particulars 6 and 9 and put the NMC to proof in relation to Particular 5a. [You were] unable to recall the conversation with Person 1 in Particular 5a or her state of mind during that telephone call. Proof of Particular 6 depended on findings at Particular 5. Particular 9 was not proved.*

Background context

3. *[You] registered as a nurse in 1985 and practised without restriction until 2022. Prior to 2021, [you] had no regulatory history or complaints about her work. [You have] no cautions or convictions... Temporary rules about bubbles and constant anxiety about the Home's residents made this far more difficult in 2020.*
4. *[You have] a very good reputation, as testimonials provided to the Panel confirm. [Witness 5] has provided a third statement signed on 6 November 2023. This says that [you are] working as a Deputy Manager 'with integrity and honesty' as before. [You have] a 'positive influence on the staff' leading 'by example' and is described by residents and their relatives as 'compassionate, caring and patient'. This is confirmed by [Witness 6], in her second witness statement dated 5 November 2023, who has found [you] to be 'honest, reliable' showing integrity and demonstrating 'fantastic knowledge with her nursing skills'.*

Situation in January 2021

5. *In March 2020 there was an exponential rise in workload with the first Covid-19 lockdown. The Home was free of the virus for several months, but on 27 December 2020 the first of several residents and staff at [the Home] tested positive for Covid-19.*
6. *...*
7. *[You were] aware that relatives were unable to visit residents and lost sleep over the fact that residents may be left to die alone if the Home could not obtain agency staff. To ensure that their basic needs were met was also a real concern, as it became increasingly difficult to obtain any staff willing to work in a home with a Covid outbreak.*
8. *As paragraph 1 of the Code of Practice provides, it is vital for staff to treat residents as individuals and uphold their dignity. To achieve this, nurses must treat people with kindness, respect and compassion, ensuring that fundamentals of care are delivered effectively, without undue delay, in accordance with their human rights. The basics of care include nutrition, hydration and maintaining hygienic conditions. BBC news and others [r]eported that some care homes were unable to ensure this during the pandemic in 2021.*

Misconduct

9. *Despite a Covid-19 positive lateral flow test at the start of her shift on 2 January 2021 Tracey Green did not self-isolate or take a PCR test and continued to work on 2, 3, 4, 5, 8, 10 and 11 January 2021. Her sole motive was to ensure that residents were cared for adequately. [Witness 2] confirmed that [you] would have been paid in full had she stayed at home with Covid; it has not been suggested that she gained financially.*
10. *[You] only worked with residents who had tested positive for Covid in January 2021 and tried to reduce risk to others by using hand gel, wearing a mask and*

other protective clothing. [Witness 1]'s witness statement dated 22 September 2022 said: 'These measures put in place by the Registrant were apparently successful because none of the non-Covid 19 residents subsequently tested positive after 2 January 2021.'

- 11. [You] deeply regrets the potential consequences of her misconduct. In a reflective statement dated 4 November 2022 she refers to the 'real and potential implications of my behaviour' at a 'time of immense stress and anxiety'. [You recognise] that [you] 'should have acted differently'. Although driven by compassion, [your] judgment was impaired by a 'tunnel vision' focus on the immediate needs of residents.*
- 12. [You] would like to apologise to colleagues, residents and the NMC for breaching Covid regulations and setting a bad example. Whatever transpires in future, [you recognise] that health professionals must always act lawfully and will do so.*
- 13. [You are] acutely aware of the fact that she did not handle her responsibilities as a manager well in January 2021. ... [you were] quick to apologise to the owner of the home and resigned from the Home in February 2021.*
- 14. At the outset of the hearing [you] admitted every allegation that she could recall and then accepted that breaching Covid regulations amounted to misconduct. [You] took a neutral position as to impairment and fully accepts the Panel's decision.*
- 15. Actions intended (at the time) to protect residents now look unjustifiable and these proceedings have highlighted the importance of complying with regulations. [You know] that nurses must not by-pass legal obligations under any circumstances.*
- 16. [You know] that [you] should have alerted [Witness 2] and the CQC, or other authorities, of the Home's predicament. [You] now recognises that staff and*

residents were put at risk by her ill-judged, but well-intentioned, decision to go into the Home, which she characterised as 'very arrogant' in an earlier statement.

17. Remediation includes obtaining a Certificate in Disaster Planning in February 2021 and professional development in Confidence and Assertiveness in early 2022. [You have] kept skills up-to-date with over thirty other courses. By resigning immediately, apologizing and cooperating with investigations, [you have] sought to make reparations.

18. In her statement dated 7 November 2022, [Witness 5] said she had offered [you] work as a full-time Deputy Manager, and that she was impressed by her knowledge, mentoring skills, integrity, professional approach and 'vocation'. [Witness 2] witness statement confirmed: 'the Registrant had been totally committed to residents while working at the Home.'

19. However, [you] deeply ashamed of her failure to act with probity in January 2021. It was totally out of character for her to breach paragraph 20 of the NMC Code:

20.4 act with honesty and integrity at all times

20.4 keep to the laws of the country

20. 8 act as a role model of professional behaviour.

Assessment of insight after a finding of dishonesty

20. The case of Sawati v GMC [2022] EWHC 283 confirms that registrants are entitled to defend themselves. Whether it is fair to use a registrant's 'rejected defence' in assessing insight or to aggravate any sanction may depend on relevant factors including:

- o how far state of mind or dishonesty was a primary rather than second-order allegation to begin with*

- *what, if anything, the registrant was positively denying other than their own dishonesty.*

21. *In Ahmedsowida v GMC [2021] EWHC 3466 the Judge said that putting the regulator to proof is just ordinary due process: ‘Contesting the charges, even robustly, should not be treated of itself as evidence of lack of insight.’*

22. *In Sayer v General Osteopathic Council [2021] EWHC 370 the High Court reviewed the ‘rejected defence’ principles and held that it was ‘wrong to equate maintenance of innocence with lack of insight’.*

23. *[You] fully accepts the findings of the FTPC. The length of these proceedings has provided an opportunity to develop even deeper insight into catalysts for her behaviour in January 2021 and fully to appreciate the potential consequences.*

24. *In Watters v NMC [2017] EWHC 1888 the High Court said that it is important to differentiate between different degrees of dishonesty. Watters involved a ‘one-off fault in the context of a life-long career of public service of a high standard’.*

25. *The Judge in Watters found that it was wholly out of proportion for the Panel to conclude that suspension was not a suitable penalty. ‘The appellant had suffered considerably under the findings of the Panel and the damage to her reputation and her sense of self-worth was profound.’ A suspension order of two months would have been an appropriate sanction.*

26. *In Lusinga v NMC [2017] EWHC 1458 the appellant dishonestly failed to inform his employer that he was undertaking additional employment. On appeal it was argued that the panel had not taken proper account of mitigating factors. The Court said that: ‘on the scale of dishonesty, this was a case at the very bottom end... There was no ill-gotten financial gain, nor any attempt at one. As there was no fraudulent gain or professional incompetence. the Judge said that ‘the*

public interest in the safe return to practice of a competent nurse' should have been considered in any fair, balanced sanction decision.

Sanction

- 27. To reach a proportionate decision on Sanction, the FTPC should balance aggravating and mitigating factors, taking account of relevant guidance. It should consider each option, starting with the least restrictive.*
- 28. In evidence, [you] acknowledged that [Witness 3] was truthful and that she trusted her account of their conversation. [Your] main recollection is that it was hot and people were dying in the Home. [You were] totally despondent, exhausted, anxious and focused on residents' needs at the time. Subsequently she could not remember exactly what she said or why, but fully accepts the findings of fact made.*
- 29. The dishonesty found in Particular 6 related to one telephone call when [you] had Covid-19. Although going to work after a positive LFT result was not an isolated incident, it was confined to ten days at a time of ill-health in an otherwise excellent career. Account should be taken of the lapse of time since January 2021 and good conduct since then.*
- 30. Although [you have] been practising well since these events, she recognises the need to mark wrongdoing and to ensure that the public can trust nurses and the regulatory process. It is also important to judge her actions in the context of a global pandemic and fast-changing rules and regulations. The public would be aware of the conflicting demands on nurses. The police were informed and took no action.*
- 31. If the FTPC considers the Covid-19 pandemic and dearth of agency staff to amount to unique and exceptional circumstances, it may consider taking no further action or imposing a caution. [you] would like to assure the Panel that if conditions of practice were to be ordered, she would comply with them*

diligently, as with the interim conditions. Fitness to practise hearings and decisions contribute to upholding standards and maintaining confidence in health professionals. This process has also had a great psychological and financial impact on [you].

32. *Should the FTPC be minded to suspend her, [you] would ask that this be limited to the minimum necessary to satisfy the wider public interest. A short suspension should be sufficient to uphold standards and maintain confidence in nurses, taking account of the fact that the misconduct was limited to an uncharacteristic misjudgement in harrowing circumstances. It was one episode, by a nurse who was unwell, in the context of a life-long career of public service of a high standard.*
33. *To strike off such a highly valued nurse would be wholly disproportionate in all the circumstances; even a suspension would affect residents. [Witness 5] states that: '[you] continues to prove herself... as a competent, honest and dutiful nurse,' adding that the Allegation was 'not a true representation of her nature'. The FTPC should take account of the 'very stressful circumstances that plagued all care home managers during the devastating impact of COVID.'*
34. *[Witness 5] currently relies on [you] and says in her recent statement: 'To judge [you] on decisions made at such a difficult time, under extenuating circumstances, in comparison to 35 years of flawless service, would be a great loss to the nursing profession.' The Panel is urged consider the impact of any restriction on [your] ability to continue fulfilling her responsibilities as a Deputy Manager.*
35. *[You have] no desire to manage a care home in future. However, the FTPC may be concerned that others would ask her to do so. A conditions of practise order would make this option impossible should the conditions be similar to those already imposed on an interim basis. Conditions would deal with any perceived risk of [you] taking on too much responsibility and may be seen as*

appropriate, proportionate and measurable. There is a real public interest in facilitating the safe practice of a very experienced and committed nurse.

36. At every stage of these proceedings, [you have] cooperated with the NMC and attended each day of the hearing, despite the psychological toll on her well-being. [You have] answered all questions to the best of her ability and fully accepts the findings of fact by the FTPC. [You now have] sufficient insight into the potential impact of her actions to minimise any risk of repetition. In future, she would ask for help, if needed.

37. Although testimonials indicate that [you are] a professional, compassionate nurse who poses no risk to others, she recognises that there is a wider public interest in declaring and upholding standards and maintaining public confidence in the profession. The FTP Committee is asked to find that [you] poses no future risk and to take account of the public interest in enabling a good nurse to continue in safe practice.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences.

The panel had careful regard to the NMC SG, in particular: How we determine seriousness, Reference FTP-3, last updated 1 August 2023; Factors to consider before deciding on sanctions, Reference SAN-1 last updated 1 August 2023; and Considering sanctions for serious cases, Reference SAN-2, last updated 2 October 2023. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating feature:

- Conduct which put residents and colleagues at risk of suffering harm.

The panel also took into account the following mitigating features:

- You have developed sufficient insight into the regulatory concerns and have fully remediated and apologised for your actions.
- You have undertaken relevant training courses and provided several positive testimonials from your current employer (Witness 5) and line manager (Witness 6), demonstrating that you are following the principles of good practice and have kept up to date with your area of practice.
- It was a difficult time of year for you due to past personal matters.
- The level of support in the nursing home was negatively impacted because of staff sickness and the inability to source adequate numbers of suitable agency staff due to the COVID-19 pandemic, as supported by Witness 2.
- Your altruistic motivation was to care for the residents with dignity and to the level required by the NMC Code when you were unable to source adequate levels of staffing.
-

The panel also bore in mind that you have no previous adverse regulatory history over a nursing career spanning 35 years.

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 action.

It then considered the imposition of a caution order, but again determined that, due to the seriousness of the case, and the public interest concerns identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be

inappropriate in view of the issues identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be appropriate, proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *...*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force;*
and
- *Conditions can be created that can be monitored and assessed.*

The panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and the public interest concerns. Further, this is not a case where there are failings in your clinical skills which require to be addressed: the panel has already found, in light of all the evidence including the further testimonials from Witness 5 and Witness 6 that it has received recently, that there is no need for a finding of impairment on public protection grounds and that your fitness to practise is impaired for public interest reasons alone. In the panel's view, there are no conditions which would be relevant and appropriate.

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;*
- ...
- ...

While this was not a single incident, it was a single episode in the context of unusual circumstances and there has been no repetition since. Indeed, the testimonials from your employer and your manager speak very highly of your conduct. The panel was of the view that you do not have deep-seated harmful personality or attitudinal problems and it has already found that you have sufficient insight and that the risk of repetition is negligible.

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

It did go on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that this would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order.

Balancing all of these factors, the panel has concluded that a suspension order would be the appropriate and proportionate sanction. The panel noted the hardship such an order will inevitably cause you. However, it is satisfied that this is outweighed by the need to meet the public interest.

The panel considered that this order is necessary to mark the importance of maintaining public confidence in the profession, and to declare to the public and the profession the standard of behaviour required of a registered nurse.

Taking into account the mitigating features, the impressive testimonials from your current employers and the public interest in permitting an otherwise competent and valued nurse to return to unrestricted practice, the panel determined that a suspension order for a period of 4 months was appropriate in this case to mark the seriousness of the misconduct and the public interest considerations. It was satisfied that this order, and for this period, was proportionate in the circumstances.

In accordance with Article 29 (8A) of the Order, the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary. The panel bore in mind that it had determined there were no remaining public protection concerns arising from its findings and that it had found that your fitness to practise was impaired solely on the grounds of public interest.

The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession(s) as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, the current substantive order will expire, without review, at the end of the 4-month period.

Interim order

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

The panel heard and accepted the advice of the legal assessor, who advised it as to its powers under Article 31(2) of the Order.

Submissions on interim order

The panel took account of the submissions made by Ms Kyriacou. She applied for an interim suspension order for 18 months. Ms Kyriacou submitted that the panel will be aware that a substantive sanction does not come into force until the end of the 28-day appeal period. She explained that if there is an appeal, then the sanction does not come into effect until the disposal of the appeal.

Ms Kyriacou submitted that in order for the panel to determine whether an interim order should be imposed, the panel should consider whether an interim order is necessary balancing all the relevant factors. In light of the panel's finding of impairment on public interest grounds only, Ms Kyriacou explained that the NMC Guidance states that it would be relatively rare for an interim order to be made only on the grounds that an order is otherwise in the public interest, if there is no evidence or risk of harm to patients. She submitted that the threshold for imposing an interim order solely on this ground is high and the panel would have to be satisfied that public confidence in the profession could be seriously damaged by the nurse continuing to practise without restriction.

Ms Kyriacou also referred the panel to the case of *Sheikh v General Dental Council [2007] EWHC 2972 (Admin)*, which sets the bar high for imposing an interim order on public interest grounds alone. She submitted that the panel must however carry out the exercise of considering whether indeed an interim order is necessary in the public interest and whether public confidence in the profession could be seriously undermined if one was not imposed.

Ms Kyriacou submitted that the panel must bear in mind its reasoning given in its determination for the sanction being imposed. The panel said that a suspension order was necessary to mark the importance of maintaining public confidence in the profession and to declare to the public and the profession the standard of behaviour required of a registered nurse.

Ms Kyriacou submitted that it can be seen from the submissions of Ms Moller that there is information provided about the care home, the provisions in place and the shifts that you have been scheduled to complete over the next month, starting from this coming

Saturday. She submitted that it may be that if the panel does consider that an interim order is necessary, interim conditions of practice may be appropriate in the terms suggested by Ms Moller. The panel may however consider this is not sufficient or proportionate, and that an interim suspension order is required to maintain confidence in the profession.

Ms Moller referred the panel to, and expanded on, her written submissions opposing an interim order:

*'The Panel may impose an Interim Order if it determines that it is **necessary** to protect members of the public, or is otherwise in the public interest, or is in the best interests of the registrant. Panels should balance these factors against other interests of the registrant, which may be to return to work. The NMC has not argued that it is necessary to protect patients, residents or any other member of public – it relies solely on the wider public interest, which includes the public interest in care homes being adequately staffed, particularly in winter. The Panel should take account of the impact of any interim order on the residents of the Manor House, their relatives, colleagues and [Witness 5].*

[Witness 5] did not anticipate a suspension order, despite being warned that it could be imposed. Even if she had, it would be infeasible to recruit a nurse on a provisional basis. [You are] on duty this Saturday, Sunday, Monday, Tuesday, Wednesday and has shifts booked up to 21 December 2023. It would be very difficult for [Witness 5] to recruit a temporary N to undertake these shifts, especially at such short notice. [You are] also responsible for training and supervision of other members of staff. [You] provides training on moving and handling patients whenever a new member of staff joins – also every six months for regular staff. [You do] 60-90 minutes Supervision sessions every seven weeks; this is due to be arranged next week (as she was unavailable on Monday this week). Although [you were] aware of the date of the hearing for some time and of the risk of an order being imposed, [Witness 5] did not appreciate the likelihood of a suspension. No arrangements for the care of residents in [your] absence have been made.

An interim order may be appropriate in a case where a registrant poses a risk to patient or resident safety but the NMC has not argued that here. [You have] not provided poor clinical care or abused her position of trust.

If the Panel is minded to impose an interim (or immediate) order [you] respectfully asks the Panel to consider imposing four weeks of conditions, in similar terms to those imposed in July 2023 – [you] would diligently comply with those. This would allow [Witness 5] to recruit a temporary nurse from 21 December to 21 April 2024. Interim conditions would be fairer to residents (than a suspension) as [you] would be able to explain the situation to them and conduct a proper hand over to those taking over her duties.

The decision as to whether to impose an interim order is at the discretion of the Panel based on the facts of each case. The Panel should consider the seriousness of the matter that led to the Sanction and whether it is appropriate for [you] to continue in unrestricted practice before the substantive order takes effect, bearing in mind that the Panel has found no risk to patients, residents or other members of the public.

*It is submitted that immediate action is not required to uphold standards or to maintain public confidence in the nursing profession or its regulator. The test is necessity, not desirability – in other words, no immediate / interim order should be imposed unless it is **necessary** in the public interest. It is submitted that an interim order, in this case, would only cause distress to residents and thus be against the public interest.'*

Decision and reasons on interim order

In reaching its decision, the panel had regard to the NMC Guidance, in particular: *Decision making factors for interim orders Reference INT-2, last updated 2 October 2023.*

The NMC has not sought an interim order on the grounds of public protection, or that it is in your interests. The panel is of the same view: it has found impairment solely on the grounds of public interest and has found that there is no requirement for the protection

of the public. It is satisfied that an interim order is not necessary to protect the public and an interim order would not be in your own interests.

That leaves the second ground, that an interim order is otherwise in the public interest so as to maintain confidence in the profession and its regulatory process, notwithstanding that an interim order is unnecessary for public protection. The panel is not persuaded that an interim order should be made on this ground. The threshold for making an interim order on this ground alone is high. In the panel's view, a reasonable and well-informed member of the public would not have their confidence in the profession damaged merely because the panel made no interim order but allowed its substantive order of suspension to take effect in due course.

In addition, even if the panel were of the view that there was a case for making an interim order on the grounds of public interest, it would have regarded that order as disproportionate, as any benefit to public confidence would be outweighed by the impact financially and otherwise on you and the disbenefit to the public in being deprived of your work as a competent nurse for an additional period.

That concludes this determination.