

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

**Substantive Hearing
Thursday, 25 April 2024 – Friday, 3 May 2024**

Virtual Hearing

Name of Registrant: Raymond Joseph Hardaker

NMC PIN 06B1575E

Part(s) of the register: Nurses part of the register, Sub part 1
RNMH: Mental health nurse, level 1
March 2006

Relevant Location: Lancashire

Type of case: Misconduct

Panel members: Michelle McBreeze (Chair, lay member)
Lisa Holcroft (Registrant member)
Margaret Stoddart (Lay member)

Legal Assessor: Gillian Hawken

Hearings Coordinator: Jessie Miller

Nursing and Midwifery Council: Represented by Ms Vinall, Case Presenter

Mr Hardaker: Present and represented by Ms Simpson,
Counsel instructed by Royal College of Nursing
(RCN)

Facts proved by admission: Charges 1, 2a, 2b

Facts proved: Charges 3, 4

Facts not proved: None

Fitness to practise: Impaired

Sanction: Suspension order, six (6) months

Interim order:

Interim suspension order, 18 months

Details of charge (as amended)

'That you, a registered nurse:

- 1) On 11 January 2021, submitted an employment application and/or Curriculum Vitae to Priory Group Ltd in which you did not include that you had worked for Elysium Healthcare between April and May 2020.
- 2) Your actions at charge 1 were dishonest in that you deliberately sought to conceal from Priory Group Ltd the fact that:
 - a) you had worked for Elysium Healthcare between April and May 2020;
 - b) Elysium Healthcare had made a fitness to practise referral about you to the NMC.
- 3) On or around a date between 25 and 27 May 2021, you spoke to Colleague A and requested that Priory Group Ltd did not disclose this fitness to practise referral to the NMC on a reference to a potential employer.
- 4) Your actions at charge 3 were dishonest in that you deliberately sought to conceal from a potential employer that you were the subject of a fitness to practise referral to the NMC.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Vinall, on behalf of the NMC, to amend the wording of charges 1 and 2.

The proposed amendment was to change '*between March and April 2020*' to '*between April and May 2020*' in both charges. It was submitted by Ms Vinall that the proposed amendment would provide clarity and more accurately reflect the evidence.

'That you, a registered nurse:

- 1) On 11 January 2021, submitted an employment application and/or Curriculum Vitae to Priory Group Ltd in which you did not include that you had worked for Elysium Healthcare between ~~March~~ **April** and ~~April~~ **May** 2020.
- 2) Your actions at charge 1 were dishonest in that you deliberately sought to conceal from Priory Group Ltd the fact that:
 - a) you had worked for Elysium Healthcare between ~~March~~ **April** and ~~April~~ **May** 2020;
 - b) Elysium Healthcare had made a fitness to practise referral about you to the NMC.
- 3) On or around a date between 25 and 27 May 2021, you spoke to Colleague A and requested that Priory Group Ltd did not disclose this fitness to practise referral to the NMC on a reference to a potential employer.
- 4) Your actions at charge 3 were dishonest in that you deliberately sought to conceal from a potential employer that you were the subject of a fitness to practise referral to the NMC.

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

Ms Simpson, on your behalf, stated that she had no observation to make in relation to the application.

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

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

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

At the outset of the hearing, Ms Simpson made a request that parts of this case be heard in private on the basis that proper exploration of your case involves [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Ms Vinall indicated that she had no objection to the application.

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

Having heard that there will be reference [PRIVATE], the panel determined to hold these parts of the hearing in private in order to protect you and your family.

Background

You commenced employment with the Priory Group Limited (the Priory) on 1 March 2021. On 16 April 2021, you met with your manager to inform her that you were in receipt of a letter from your RCN Representative advising that your previous employer, Elysium

Healthcare (Elysium), had referred you to the NMC. You were asked to provide a copy of the letter.

On 21 April 2021, it was stated by your manager that this employer was not on your Curriculum Vitae (CV) and you confirmed that you only worked at Elysium for a little while and decided not to include it in your CV as *'it didn't look good'*.

You attended a probation review meeting on 23 April 2021 where the rationale for withholding this information was further discussed. Your employment with the Priory was subsequently terminated within your probation period on 23 April 2021.

The NMC received a referral on 23 April 2021 from Priory Group Limited.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Ms Simpson, who informed the panel that you admitted charges 1 and 2. You told the panel that in relation to charge 1, you did not accept that you submitted your *'Curriculum Vitae'* to the Priory. The panel noted that this charge states *'and/or'* and that you will have an opportunity to make submissions in relation to this. You accepted this.

The panel therefore finds charges 1 and 2 proved in their entirety, by way of your admissions.

In reaching its decisions on the disputed facts, the panel took into account all of the oral and documentary evidence in this case together with the submissions made by Ms Vinall and by Ms Simpson.

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, or is more likely than not to be true.

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

- Witness 1: HR Advisor at the Priory Group
- Witness 2: Manager at Priory Preston Hospital
- Witness 3: HR Administrator at the Priory Group

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor who made reference to cases including but not limited to, the cases of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 and *R (Dutta) v General Medical Council* [2020] EWHC 1974 Admin. It considered the witness and documentary evidence provided by both the NMC and by you.

In relation to charge 1, that was found proved by way of admission, the panel considered whether or not to find a factual finding in relation to ‘...submitted an employment application and/or Curriculum Vitae...’. The panel bore in mind your admission is in relation to accepting omitting information from your application form, but not in relation to submitting your Curriculum Vitae (CV). During cross examination, you were asked to review the CV that the NMC submitted was received by the Priory Group which had your most recent employment position as Service Care Solutions, with the date you concluded in this position being December 2020. In your evidence, you stated that your CV was online and that you had failed to update it, therefore did not purposefully omit information. It was highlighted by Ms Vinall that this could not be the case, as an entry for employment concluding in December 2020, post-dates your employment with Elysium Healthcare. When questioned on this, you stated that you could not account for this discrepancy and ‘/

know what it looks like'. You were unable to provide any alternative explanation. The panel does not accept your evidence and finds that you did not include the relevant information in both your employment application and Curriculum Vitae.

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

Charge 3

On or around a date between 25 and 27 May 2021, you spoke to Colleague A and requested that Priory Group Ltd did not disclose this fitness to practise referral to the NMC on a reference to a potential employer.

This charge is found proved.

The panel considered the alleged conversation set out in charge 3 in two stages:

- whether a conversation between Witness 3 and you occurred on or around 25 – 27 May 2021; and
- if it did, the contents of this conversation.

Your evidence to the panel is that you don't recall making a phone call to Witness 3, or indeed to the Priory more generally. You said *'I am not saying that [Witness 3] made it up out of the blue.'*

The panel considered the evidence from Witness 1 and 3 to be consistent and credible, whilst noting the limitations that the passage of time can create. In their oral evidence, both Witness 1 and 3 maintain their certainty that this call did occur and both recollected speaking about it afterwards. The existence of this phone call can be further corroborated by an email sent by Witness 1 to the NMC on 27 May 2021. In her telephone conversation with the NMC on 2 February 2022, Witness 3 also attests to the telephone conversation

she had with you. Chronologically, these two pieces of evidence are the most contemporaneous to when the conversation is said to have occurred, and for these reasons, the panel have determined that it is more likely than not, that a conversation between you and Witness 3 occurred on or around 25-27 May, 2021.

The content of the conversation was then considered by the panel. Witness 1 and 3 gave evidence that the conversation was held via a phone call initiated by you. No documentary record of the conversation was made at the time of the call, however Witness 1 stated that they would not make a record of such conversations. Therefore, the most contemporaneous written record of the conversation is contained within Witness 1's email to the NMC on 27 May 2021, which stated:

'...Mr Hardaker has applied for a position with the following organisation who have contacted us requesting a reference...Mr Hardaker has contacted us asking that we did not declare his NMC referral on his reference. This further highlights further concerns to us that he is failing to disclose information to a potential employer'

In response to being asked about the conversation in question, you stated:

'I don't recall making a phone call asking for these specific things. If I did make a call, [Witness 3] may have misunderstood what I said.'

The panel were of the view that your oral evidence in relation to this question was difficult to reconcile as you firstly state that you have no recollection of such a call, but go on to state that if the call did take place, Witness 3 is mistaken in its detail.

You gave evidence that it would make no sense to make this request of the Priory when you had disclosed information about an NMC referral to a future employer. There is documentary evidence from Red Sector Recruitment Limited in an email to the NMC dated 23 March 2022 that you began work with them on 23 September 2021 and that you

revealed your NMC referral to them. There is also a letter from Mersey Care dated 22 March 2022 that you alerted them to the NMC referral on 18 March 2022. These documents post-date May 2021 when the call to the Priory was made, which does not support your position.

The panel asked Witness 3 about her recollection as to whether you asked her if the reason for dismissal *'is disclosed'* or *'can it not be disclosed'*. Witness 3 confirmed that this was phrased as a request, not a broader or more general question, which is why she escalated the matter to Witness 1. Witness 3 told the panel, *'If it had been more general, I wouldn't have spoken to [Witness 1] about it and I wouldn't have referred it on.'*

The panel was mindful of the evidence that there was a good working relationship between you and the Priory. You have not suggested any fabrication of evidence on Witness 3's part.

The panel determined that, based on the evidence before it, it was more likely than not, that you made a call to Witness 3 on or about 25-27 May 2021, requesting that the Priory did not disclose your NMC referral on a reference to a potential employer.

Charge 4

Your actions at charge 3 were dishonest in that you deliberately sought to conceal from a potential employer that you were the subject of a fitness to practise referral to the NMC.

This charge is found proved.

In reaching this decision, the panel had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 in which the Supreme Court, giving judgment, stated as follows:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The panel first considered the approach as set out in *Ivey v Genting Casinos*, what did you know as a matter of fact at the material time? The panel bore in mind that you had just been dismissed from the Priory for not disclosing full employment information on your application form. The panel was in no doubt that you knew, at the time that you spoke to Witness 3, and asked that the Priory did not disclose your NMC referral, that any potential employer would be entitled to that information. The panel further noted that you accepted the reason for your dismissal from the Priory as being reasonable.

The panel was satisfied that ordinary, decent people would consider that requesting that this information be withheld was dishonest.

The panel finally considered if the evidence before it demonstrated any other reasonable explanation beyond dishonesty, however concluded in these circumstances, no other explanation was more likely than dishonesty.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to

practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

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

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

Ms Vinall identified the specific, relevant standards where your actions amounted to misconduct. She invited the panel to find that you had breached parts 20, 20.2, 20.3, 21, 21.4, 23 and 23.5. Ms Vinall stated that these failings do amount to a serious departure from the standard and behaviour expected of a registered nurse and by omitting information from an application and CV, you have inhibited a potential employer from

carrying proper investigations and risk assessments, which could in turn lead to risk of safety to patients.

Ms Simpson stated that it is not submitted that the findings of dishonesty in this case do not amount to misconduct.

Submissions on impairment

Ms Vinall moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Vinall referred the panel to the test formulated by Dame Janet Smith in her Fifth Shipman Report when considering whether impairment is established or not. The test is set out in the case of *CHRE v NMC v Grant*.

Ms Vinall submitted that limbs b, c and d of this test are engaged in this case. She stated that in both your reflection and evidence, you have failed to demonstrate your understanding of the impact this conduct has had upon the profession and public and how you would avoid repeating this conduct in the future.

Ms Vinall highlighted the positive references received in regard to your character, however noted that none of these were provided by subsequent or former employers, nor do they address your insight, honesty or integrity within a professional setting. She went on to state that there is no evidence to suggest that you have undertaken any courses to better understand the importance of honesty or reflected on how you would act differently in the future in similar situations.

Ms Vinall submitted that the evidence before it, being that you knowingly omitted information regarding your employment history and NMC referral from an application, suggests a deep-seated attitudinal issue which may affect the public's trust in nurses. She went on to state that your apparent dishonesty is further aggravated by attempting to involve a colleague in this conduct.

Ms Vinall stated that there is a risk of repetition in this case based on your limited insight and lack of evidence to support that you have adequately addressed the concerns raised. She concluded her submissions by inviting the panel to make a finding that your fitness to practise is currently impaired on public interest grounds.

Ms Simpson submitted that it is agreed by all parties that no person receiving care was harmed or put at risk of harm due to your misconduct, and as such, there is no current or future risk of harm in these circumstances.

Ms Simpson stated that it is accepted by you that you breached fundamental nursing tenets in the past when you submitted an application for the Priory, omitting relevant information and that the panel found these tenets breached during a conversation in May 2021. She submitted that since these incidents, you have demonstrated your usual character and have acted with honesty and integrity whilst working unrestricted in a nursing environment. Ms Simpson submitted that, based on this, you are not liable to repeat this behaviour, therefore the risk of repetition is very remote.

Ms Simpson submitted that in your oral evidence, you accept that [PRIVATE].

Ms Simpson noted that two charges of dishonesty have been found proved by the panel that relate to the same incident. She went on to submit that this does not indicate long term or sustained and repeated misconduct, but was an incident in an otherwise long and unblemished career.

Ms Simpson stated that you have admitted charges 1 and 2 but not 3 and 4, which have since been found proved by the panel. She submitted that this does not mean you lack insight. Ms Simpson reiterated that you have consistently maintained that you do not recall the conversation in May 2021, however if this conversation took place, you deny the contents, as this would be outside of your usual character. You never suggested that any of the witnesses called have fabricated any evidence and submitted that you have shown an understanding of the seriousness of dishonesty as misconduct. Ms Simpson stated that it is highly unlikely that this offending conduct will be repeated.

Ms Simpson submitted that her primary position is that should be no finding of current impairment in your case. As a secondary position however, she suggested that a finding of impairment be made on public interest grounds alone. That said, she referenced NMC guidance DMA-1, and submitted that in order to find impairment, on public interest grounds alone, a case should be '*so profoundly serious, that such a finding is required*'.

Ms Simpson stated that you have demonstrated an ability to practise kindly, safely and professionally. She concluded her submissions by reiterating that, if any finding of impairment is made, it should be made on public interest grounds alone, however the primary submission is that no finding of impairment should be made.

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), *General Medical Council v Meadow* [2007] QB 462 (Admin) and *CHRE v NMC and Grant and Cohen v General Medical Council* [2008] EWHC 581.

Decision and reasons on misconduct

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

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

Specifically:

'20 Uphold the reputation of your profession at all times

To achieve this, you must:

- 20.1 *keep to and uphold the standards and values set out in the Code*
- 20.2 *act with honesty and integrity at all times, 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*

'21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

- 21.4 *make sure that any advertisements, publications or published material you produce or have produced for your professional services are accurate, responsible, ethical, do not mislead or exploit vulnerabilities and accurately reflect your relevant skills, experience and qualifications'*

The panel was mindful that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that in light of the seriousness of the concerns, which involve two incidents of dishonesty in a four month period, lack of transparency, as well as an attempt to involve a colleague in this dishonest behaviour, your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

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

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.'

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

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

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

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

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

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

The panel was of the view that your misconduct had been dishonest, breached a fundamental tenet of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel did not find limb a engaged in this case as there was no suggestion of unwarranted risk of harm to patients.

The panel considered your level of insight to be limited with the opportunity for further development. It noted your reflective piece in which you apologise for your conduct and make admissions to charges 1 and 2. In this statement, you also wrote:

'...While this does not excuse my behaviour, I feel that my decision-making processes were impaired, and I now realise that if I had given it more thought I would have not acted against my own conscience and against the ethics of my profession in such a way. In view of this I can assure the NMC that there will be absolutely no repeat of this conduct, as honesty is always the best policy and is integral to the trust placed in nurses.'

The panel acknowledge this reflection, however are also of the view that there are still aspects in which you have been evasive and have not evidenced acceptance of culpability of your actions. The panel does not have sufficient evidence before it to demonstrate how you would act differently in the future, should you find yourself in a similar situation. It therefore determined that you may be liable to repeat such conduct in the future.

The panel was satisfied that the misconduct in this case is capable of being addressed and carefully considered the evidence before it, in determining whether or not you have taken steps to do so. It was the view of the panel that although you have some insight, it requires further development. The panel acknowledged that whilst dishonesty is difficult to remediate, it is something that could be achieved through further reflection and planning, particularly around how you would avoid such conduct in the future, should you be posed with a similar situation.

Based on the information before it, including your level of insight, the panel is of the view that there is a residual risk of repetition. It therefore determined that a finding of impairment is necessary on the grounds of public protection.

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

In addition, the panel concluded that a reasonable and well-informed member of the public would find such dishonest behaviour by a registered nurse unacceptable. It also concluded that the public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months with a review. The effect of this order is that the NMC register will show that your registration has been suspended.

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

Submissions on sanction

Ms Vinall informed the panel that in the Notice of Hearing, dated 19 March 2024, the NMC had advised you that it would seek the imposition of a 12 month suspension order if it found your fitness to practise currently impaired.

Ms Vinall submitted that charges around dishonesty will always be considered serious because of the importance of honesty within the nursing profession. She went on to state that, in this case, the dishonesty was premeditated as you sought to obtain financial gain through employment and attempted to involve a colleague in this.

Ms Vinall identified the following aggravating features:

- two instances of dishonest committed over a period of time; and
- lack of developed insight into your failings.

Ms Vinall identified the following mitigating features:

- panel have found some insight; and
- your early admission in charges 1 and 2.

Ms Vinall reviewed all of the sanctions available to the panel and submitted that taking no action, making a caution order or imposing a conditions of practice order would not sufficiently address the misconduct as found proved in the charges, nor would it protect the public or public interest. She went on to state that, given your level of limited insight and opportunity for further development, a suspension order remains the most appropriate order to impose.

Ms Simpson submitted that if the panel decides to impose an order, it should be that of a conditions of practice order, or in the alternative, a short period of suspension.

Ms Simpson identified no aggravating features.

Ms Simpson identified the following mitigating features:

- early admissions in relation to charges 1 and 2;
- demonstrated remorse for your wrongdoings through insight and reflection;

- continued good practice for three years since this event with no further concern; and
- [PRIVATE]

Ms Simpson accepted that whilst dishonesty is difficult to remediate, it can be achieved through further reflection and planning around how to avoid the conduct again in the future. She submitted that a conditions of practice order could be procured to address the concerns raised and such conditions could include:

- development and provision to the NMC of a personal development plan that addresses the areas of concerns; and
- confirmation to the NMC as to any nursing positions you apply for with confirmation that your full employment history and NMC referrals have been disclosed.

Ms Simpson submitted that any order greater than a short period of suspension would be inappropriate in the circumstances of your case.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Two incidents involving dishonesty over a four month period both connected to non-transparency about employment history and NMC referral

- Attempting to involve a colleague in dishonest conduct

The panel also took into account the following mitigating features:

- Admission of charges 1 and 2
- Demonstrated remorse for actions in charges 1 and 2
- [PRIVATE]

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection and public interest issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the 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 proportionate, measurable and workable. The panel took into account the SG and the list of circumstances in which a conditions of practice may be appropriate. Of note in this case, the panel was satisfied that there is:

- *No evidence of harmful deep-seated personality or attitudinal problems*

The panel was not satisfied however that, in the particular circumstances;

- *Conditions can be created that can be monitored and assessed*

The panel determined that in this case involving dishonesty and no clinical concerns, there are no practical or workable conditions that could be formulated.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case regarding the elements of dishonesty, nor would it adequately protect the public and public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel reviewed the SG and considered that following factors are relevant in your case:

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

The panel 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 it would be disproportionate. It was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register.

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 this is outweighed by the public interest in this case.

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

The panel determined that a suspension order for a period of six months was appropriate in this case to mark the seriousness of the misconduct and to allow you time to fully reflect and provide evidence of detailed reflection and remediation.

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

Any future panel reviewing this case would be assisted by:

- Demonstrated professional development in probity and ethics (this can be a course and/or personal research) through a written reflective statement
- Personal written reflection to demonstrate how you would act differently if presented with a similar circumstances

This will be confirmed to you in writing.

Interim order

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

suspension sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Ms Vinall, in which she stated that an 18 month interim suspension order is necessary to cover the 28 day appeal window. She went on to state that this interim order is required on the same basis as set out in the NMC submissions made at the impairment stage.

The panel also took into account the submissions of Ms Simpson, in which she stated that you have not been subject to any interim order or restriction since your referral to the NMC. She went on to note that whilst a finding of impairment has been made and a substantive suspension order imposed, it is not necessary for an interim order to be imposed.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to ensure that you cannot practise before the substantive suspension order takes effect. This will cover the 28 days during which an appeal can be lodged and, if an appeal is lodged, the time necessary for that appeal to be determined.

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

That concludes this determination.