

# Section 29 Case Meeting

16 July 2020

157-197 Buckingham Palace Road, London SW1W 9SP



## Abigail Helena CHARLES

### *Members present*

Alan Clamp (in the Chair), Chief Executive, Professional Standards Authority  
Kisha Punchihewa, Head of Legal (Senior Solicitor), Professional Standards Authority  
Mark Stobbs, Director of Scrutiny & Quality, Professional Standards Authority

### *In attendance*

Fenella Morris, Counsel, 39 Essex Street Chambers

### *Observers*

Michael Humphreys, Scrutiny Manager, Professional Standards Authority  
Rachael Martin, Scrutiny Team Coordinator, Professional Standards Authority  
Rebecca Senior, Lawyer, Professional Standards Authority  
Remi Gberbo, Lawyer, Professional Standards Authority

## 1. Definitions

- 1.1 In this meeting note, standard abbreviations have been used. Definitions of the standard abbreviations used by the Authority, together with any abbreviations used specifically for this case are set out in the table at Annex A.

## 2. Purpose of this note

- 2.1 This meeting note records a summary of the Members' consideration of the relevant decision about the Registrant made by the regulator's panel, and the Authority's decision whether or not to refer the case to the court under Section 29 of the Act.

## 3. The Authority's powers of referral under Section 29 of the Act

- 3.1 The Authority may refer a case to the relevant court if it considers that a relevant decision (a finding, a penalty or both) is not sufficient for the protection of the public.
- 3.2 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient:
- to protect the health, safety and well-being of the public
  - to maintain public confidence in the profession concerned, and

- to maintain proper professional standards and conduct for members of that profession.
- 3.3 This will also involve consideration of whether the panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regard to the safety of the public and the reputation of the profession (applying *Ruscillo*<sup>1</sup>).
4. **Conflicts of interest**
- 4.1 The Members did not have any conflicts of interest.
5. **Jurisdiction**
- 5.1 The Legal Advisor confirmed that the Authority had jurisdiction to consider the case under Section 29 of the Act. Any referral in this case would be to the High Court of Justice of England and Wales and the statutory time limit for an appeal would expire on 17 July 2020.
6. **The relevant decision**
- 6.1 The relevant decision is the Determination of the Panel following a hearing which concluded on 13 May 2020.
- 6.2 The Panel's Determination which includes the charges and findings is set out at Annex B.
7. **Documents before the meeting**
- 7.1 The following documents were available to the Members:
- Determination of the panel dated 13 May 2020
  - Determination of the panel dated 6 February 2020
  - The Authority's Detailed Case Review
  - Transcript of the hearing dated 13 May 2020
  - Counsel's Note dated 16 July 2020
  - Exhibits
  - CE Masters
  - The NMC Order 2001
  - NMC answers to PSA questions on Covid-19 reviews
  - The NMC's Indicative Sanctions Guidance

---

<sup>1</sup> CRHP v Ruscillo [2004] EWCA Civ 1356

- The Authority's Section 29 Case Meeting Manual

7.2 The Members and the Legal Advisor were provided with a copy of a response from the NMC to the Authority's Notification of s.29 Meeting. The Members considered the response having received legal advice and after they reached a conclusion on the sufficiency on the outcome.

## 8. Background

8.1 The Members were considering the outcome of a substantive review decision to revoke a 12-month suspension order and replace it with a caution order for the remainder of the order (10-month).

8.2 At the substantive hearing in February 2020, the registrant was found to have falsified timesheets over 10 months from October 2017. The registrant dishonestly falsified her timesheets by claiming for work she had not done on three occasions: on one occasion she claimed for work that had already been paid for; on seven occasions she claimed a payment rate she was not entitled to; on eight occasions she authorised her shift records when she was not permitted to; on eight occasions she released payments to be made to herself when she knew she should not, these actions were to cover up her deception; on two occasions she queried timesheets that had already been approved in order to claim a higher payment rate and breached the duty of candour by not being honest during her employer's investigation and implicating colleagues.

8.3 The registrant maintained her denials of any wrongdoing through the Trust investigation and unsuccessfully appealed her dismissal by the Nottingham University Hospitals NHS Trust. It was only at the substantive hearing that she admitted her dishonesty. The panel found that there was a low risk of repetition based on the registrant's insight and remorse and her addressing financial circumstances and therefore no impairment on public protection grounds. The panel found current impairment on public interest grounds and imposed a 12-month suspension order without a review.

8.4 The NMC and registrant jointly applied for the review hearing and the NMC has since advised the Authority that the case was selected for review given the impairment finding and sanction were solely on public interest grounds, as part of its response to Covid-19. The NMC submitted that the context of Covid-19 meant the public interest had changed since the substantive hearing. At the review hearing the registrant's representative did not contest continuing impairment but referred to a reference from the registrant's employer asking for the NMC to overturn the suspension to allow her to return to work with Covid-19 patients and suggested a two-year caution could replace the suspension.

8.5 At the review the panel decided to revoke the suspension immediately and replace it with a caution order having effect for the remainder of the original period of suspension (approximately ten months). The panel did not consider that the period of suspension already completed was sufficient to address the public interest. The panel stated that the public interest would now be best

served at a time of national crisis by returning a competent nurse to unrestricted practice.

## 9. Applying Section 29 of the 2002 Act

9.1 The Members considered all the documents before them and received legal advice.

9.2 The Members discussed the following concerns about the decision:

*What were the panels powers, and did they have the power to impose a caution for less than 12 months since the rules provide that this is the minimum period?*

9.3 The review hearing was carried out under Article 30(2) and (4) of the NMC Order. The powers available to reviewing panels are different depending on whether it is an 'on application' review or a 'standard' review required to be carried out before expiry of the sanction (Article 30(1) only). The NMC guidance on review hearings refers to the possibility that in exceptional cases, an Article 30(1) review panel might decide to use the powers in Article 30(4) to allow amendments to sanction to be made immediately by treating the review as an Article 30(2) 'on application' review. However, the NMC guidance does not generally address how various powers in Article 30(4) may be used in combination to substitute or amend sanctions.

9.4 There appeared to be a contradiction between the provisions at article 29 which sets out that the minimum term for a caution is twelve months. However, it also appeared from article 30 that, if a different sanction were imposed from the one imposed by the previous panel, the length of it could not extend beyond the expiry of the previous sanction. Thus, it appeared that the panel had imposed a sanction to extend for less than twelve months (thus potentially breaching article 29) though possibly complying with article 30.

9.5 The Members noted that conflicting arguments were adopted by the legal assessor and the NMC's representative, who suggested that it might be possible to extend the period of suspension on review and reduce that to a caution to cover the appropriate length. They also noted that there had been previous cases where panels had imposed sanctions for longer than the duration of the original suspension.

9.6 The panel had taken the legal assessor's advice that any sanction imposed should be for the remainder of the suspension order as this was the length of time for which the caution was imposed.

9.7 The Members noted that the powers of the panel were unclear and that generally the courts would be likely to interpret them in the way most favourable to the registrant.

*Was the caution order imposed sufficient to address the public interest?*

9.8 The Members considered the findings of the substantive panel serious and were mindful that at the sanction stage the panel were weighing up between a suspension and striking off order. However, they were also mindful of the

circumstances in which this case was being reviewed and the current health pandemic and NMC's drive to support the emergency situation. With that in mind the Members considered that there could be grounds in which a caution order would address the public interest in allowing a registrant to return to practise given that there were no public protection concerns regarding her practice at the substantive hearing.

- 9.9 However, in this case the Members considered that the seriousness of the misconduct warranted a longer period of caution order than that imposed to fully reflect the substantive panel's findings and the registrant had only served 2-months of the suspension order originally imposed.
- 9.10 Further, the Members considered the panel's reasons for replacing the suspension order with a caution at the sanction stage insufficient. A fuller explanation on how a 10-month caution in place of a 10-month suspension (remaining duration of the original order) would have provided confidence that the panel was approaching the decision making as required by the overarching objectives and not with a view to finding a way to allow this registrant to return to practice.

***Did the panel have sufficient information as to the impact of Covid-19 to enable it rationally to conclude that the public interest was served by allowing the registrant to return to practice?***

- 9.11 The Members noted the circumstances in which this case was reviewed and the date of the review hearing. At the time of the review hearing, 13 May 2020, the pandemic was considered to have peaked in the UK, temporary registers were not being heavily relied on and the NHS was coping with the situation. However, the Members also noted that there were no concerns regarding the registrant's clinical practice at the substantive hearing and she was willing to return to practise to help with the pandemic and had the full support of her employer.
- 9.12 Furthermore, the panel had before two references one from Deputy Chief Nurse at Sherwood Forrest Hospitals NHS Trust which state that if the suspension were 'overturned' it is planned that the registrant would work in the Emergency Admissions Unit, dealing with Covid-19 patients. The Members also noted that the panel were able to take judicial notice of the current health crisis in the UK.
- 9.13 The Members were satisfied that the panel had sufficient information on which to reach a conclusion that the public interest would best be served by allowing the registrant to return to unrestricted practise.

***Did the panel properly consider the public interest and in particular the impact on public confidence of allowing the registrant to return to practice?***

- 9.14 The Members concluded that it was difficult to determine whether the panel had in fact weighed up the public interest factors properly – upholding professional standards and maintaining. Whilst the Members agreed with the panel's description of the registrant as a 'competent nurse' they were minded that she was a competent nurse whose misconduct had a negative impact on public confidence. The Members therefore considered that the panel should have provided more clarity in their reasons for now imposing a non-restrictive

sanction and how this was adequate in terms of addressing public confidence and interest. The Members also considered that the panel could have gone further in their reasoning and explained the limitations on them in imposing a caution for any longer than the 10-months imposed given their interpretation of Article 30 (5). The Members considered that this would have provided further context in which the panel came to the decision to impose the caution for 10-months.

### **Conclusion on insufficiency for public protection**

- 9.15 The Members concluded that the panel's decision to replace a 10-month suspension order with a 10-month caution order was insufficient to maintain public interest.
  - 9.16 The Members were concerned at the lack of reasoning in relation to the panel's interpretation of the NMC Order which determined the length of sanction imposed. They were further concerned by the panel's inconsistent interpretation of the NMC Order with two other review cases held in similar circumstances at which the panels imposed sanctions for longer than the remaining order.
  - 9.17 The Members were also concerned that the panel did not give full reasons for their decision to reduce the sanction from a suspension order to the non-restrictive sanction of a caution order and how this upheld the public interest and public confidence given that the previous panel had seriously considered it as engaging its powers to remove the registrant from the register. The Members felt that the 10-month caution order after the short period of suspension did not fully address the seriousness of the original misconduct.
  - 9.18 The Members were mindful of the ambiguity in the wording of the NMC Order and the panel's powers at the review hearing as well as the various interpretations put to the panel from the legal assessor and registrant's representative. In the circumstances the Members felt that the panel should have provided a fuller explanation of their interpretation of the Order and what their preference would have been and how this restricted them in terms of the duration of the order imposed.
- 10. Referral to court**
- 10.1 Having concluded that the panel's Determination was insufficient for public protection, the Members moved on to consider whether they should exercise the Authority's discretion to refer this case to the relevant court.
  - 10.2 In considering the exercise of the Authority's discretion, the Members received legal advice as to the prospects of success and took into account the need to use the Authority's resources proportionately and in the public interest.
  - 10.3 The Members considered that it was possible to see how the panel came to interpret the NMC Rules as they did and why they felt they could not impose the caution for longer than 10-months. Whilst the Members did not consider the 10-month caution order adequately addressed the seriousness of the original findings and the panel's reasoning for imposing a caution order and the duration of the order lacking in clarity, considered that there were arguments as to why it

was not appropriate to refer the matter to court in the context of the present pandemic.

- 10.4 Taking into account those considerations, along with advice on the prospects of success, the Members agreed that the Authority should not exercise its power under Section 29 and refer this case to the High Court of Justice of England and Wales.



**Alan Clamp (Chair)**

**10/08/20**

**Dated**

## 11. Annex A – Definitions

11.1 In this note the following definitions and abbreviations will apply:

<b>The Authority</b>	The Professional Standards Authority for Health and Social Care
<b>The Panel</b>	A Fitness to Practise Committee of the Nursing & Midwifery Council
<b>The Registrant</b>	Abigail Helena Charles
<b>The Regulator</b>	Nursing & Midwifery Council
<b>NMC</b>	Nursing & Midwifery Council
<b>The Act</b>	The National Health Service Reform and Health Care Professions Act 2002 as amended
<b>The Members</b>	The Authority as constituted for this Section 29 case meeting
<b>The Determination</b>	The Determination of the Panel sitting on 13 May 2020
<b>The Court</b>	The High Court of Justice of England and Wales
<b>The SG</b>	Regulator's Indicative Sanctions Guidance

12. Annex B – Determination

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

**Substantive Order Review Hearing  
13 May 2020**

Virtual Hearing

<b>Name of registrant:</b>	Abigail Helena Charles
<b>NMC PIN:</b>	12D0005E
<b>Part of the register:</b>	Sub part 1 RNA: Adult nurse (28 May 2012)
<b>Area of Registered Address:</b>	Nottinghamshire
<b>Type of Case:</b>	Misconduct
<b>Panel members:</b>	Gregory Hammond (Chair, Lay member) Alex Forsyth (Lay member) Lynne Grundy (Registrant member)
<b>Legal Assessor:</b>	Gerard Coll
<b>Panel Secretary:</b>	Roshani Wanigasinghe
<b>Nursing and Midwifery Council:</b>	Represented by Zainab Mohammad, Case Presenter
<b>Miss Charles:</b>	Present and represented by Justin Meiland, instructed by the Royal College of Nursing (RCN)
<b>Order being reviewed:</b>	Suspension order (12 months)
<b>Fitness to practise:</b>	Impaired
<b>Outcome:</b>	<b>Caution order to come into effect immediately in accordance with Article 30 (2) and Article 30 (4)(d)</b>

## Decision and reasons on review of the substantive order

The panel decided to replace the current suspension order with a caution order.

This order will come into effect immediately in accordance with Article 30(2) of the 'Nursing and Midwifery Order 2001' (the Order). This caution order will continue to run for the remainder of the original 12 month order, namely until the end of 9 March 2021.

This review is being held because of a joint application by you and the NMC to consider your fitness to return to clinical practice to assist in the current pandemic.

This is a review of a substantive suspension order originally imposed for a period of 12 months by a Fitness to Practise Committee panel on 6 February 2020.

The current order is due to expire at the end of 9 March 2021.

The panel is reviewing the order pursuant to Article 30(2) of the Order.

The charges found proved by way of admission which resulted in the imposition of the substantive order were as follows:

*"That you, whilst working as a Band 7 Ward Sister;*

1. *On 21 October 2017, in respect of your shift on 21 October 2017:*
  - 1.1. *at 06:23hrs, you accessed the NHSP system and changed the grade code from Band 6 to Band 7;*
  - 1.2. *at 22:35hrs, you self-authorized your timesheet;*
  - 1.3. *at 22:37hrs, you released payment for your modified timesheet;*

2. *On 28 October 2017 at 12:02hrs, in respect of your shift on 29 October 2017, you accessed the NHSP system and changed the grade code from Band 5 to Band 7;*
3. *On 30 October 2017, in respect of your shift on 29 October 2017, following the Ward Administrator changing your grade code back to Band 6 and authorising your timesheet:*
  - 3.1. *At 19:25hrs, you:*
    - 3.1.1. *queried your timesheet;*
    - 3.1.2. *accessed the NHSP system and changed the grade code from Band 6 to Band 7;*
    - 3.1.3. *self-authorised your timesheet;*
  - 3.2. *At 19:27hrs, you released payment for your modified timesheet;*
4. *On 4 December 2017, in respect of your shift on 4 December 2017:*
  - 4.1. *At 15:28hrs, you accessed the NHSP system and changed the grade code from Band 5 to Band 7;*
  - 4.2. *At 19:38hrs, you self-authorised your timesheet;*
5. *On 5 December 2017, in respect of your shift on 4 December 2017, you released payment for your modified timesheet;*
6. *On 6 December 2017, in respect of your shift on 6 December 2017:*
  - 6.1. *At 21:17hrs, you accessed the NHSP system and changed the grade code from Band 6 to Band 7;*
  - 6.2. *You self-authorised your timesheet;*
  - 6.3. *At 21:19hrs, you released payment for your modified timesheet;*
7. *On 30 December 2017, in respect of your shift on 30 December 2017:*
  - 7.1. *At 20:30hrs, you;*
    - 7.1.1. *Accessed the NHSP system and retrospectively booked yourself to work this shift after the shift had ended;*

- 7.1.2. *booked yourself to work this shift despite having already been rostered to work this shift;*
- 7.1.3. *accessed the NHSP system and changed the grade code from Band 5 to Band 7;*
- 7.1.4. *self-authorized your timesheet;*
- 7.2. *At 20:32hrs, you released payment for your modified timesheet;*
- 7.3. *Procured a second payment for a shift you had been contracted to work;*
  
- 8. *On 8 January 2018, in respect of a shift on 7 January 2018:*
  - 8.1. *At 12:12hrs, you accessed the NHSP system and retrospectively booked yourself on to this shift despite not having worked this shift;*
  - 8.2. *At 12:13hrs, you self-authorized the timesheet for this shift that you had not worked;*
  - 8.3. *At 21:15hrs, you released payment for the shift you had not worked;*
  
- 9. *On 14 January 2018, in respect of a shift on 13 January 2018:*
  - 9.1. *At 11:46hrs, you accessed the NHSP system and retrospectively booked yourself on to this shift despite not having worked this shift;*
  - 9.2. *At 11:47hrs, you self-authorized the timesheet for this shift that you did not work;*
  
- 10. *On 15 January 2018 at 17:53hrs, in respect of a shift on 13 January 2018, you released payment for the shift you had not worked;*
  
- 11. *On 21 February 2018, in respect of your shift on 18 February 2018:*
  - 11.1. *At 13:30hrs, you:*
    - 11.1.1. *queried your timesheet after the Ward Administrator had authorised payment on 19 February 2018 for this shift to be paid as a Band 6;*
  - 11.2. *At 13:43hrs, you:*
    - 11.2.1. *you accessed the NHSP system and changed the grade code from Band 6 to Band 7;*

- 11.2.2. *self-authorised your timesheet;*
- 11.3. *At 14:36hrs, you released payment for your modified timesheet;*
12. *When your actions were discovered, you breached your duty of candour to be open and honest in that you implicated other colleagues;*
13. *Your actions at the above charges were dishonest in that you:*
- 13.1. *In respect of charges 8, 9, 10, claimed for work you knew you hadn't done;*
- 13.2. *In respect of charge 7, claimed for work you had already undertaken, knew you would be paid for and had been contracted to work;*
- 13.3. *In respect of charges 1.1, 2, 3.1.2, 4.1, 6.1, 7.1.3, and 11.2.1, changed the grade code and claimed for work at a payment rate you knew you were not entitled to;*
- 13.4. *In respect of charges 1.2, 3.1.3, 4.2, 6.2, 7.1.4, 8.2, 9.2, and 11.2.2, authorised your own shifts when you knew you should not have done so;*
- 13.5. *In respect of charges 1.3, 3.2, 5, 6.3, 7.2, 8.3, 10, and 11.3 released payment to yourself when you knew you should not have done so;*
- 13.6. *authorised your own timesheets and released payment to conceal your actions;*
- 13.7. *in respect of charges 3.1.1 and 11.1.1, queried your timesheets, which had already been approved, so that you could alter your grade code and claim for work at a payment rate you knew you were not entitled to;*
- 13.8. *in respect of charge 12, implicated other colleagues to conceal your actions.*

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

The original panel determined the following with regard to impairment:

*“Regarding insight, the panel accepted that, with the passage of time, your work as a nurse since events, the relevant training you have undertaken, [PRIVATE],*

*you understand the serious nature of your misconduct. It accepted that in your reflective piece and oral evidence your remorse for your actions was both apparent and sincere. It considered that you demonstrated insight into the adverse effect of your actions on patients, colleagues, and the wider nursing profession.*

*In its consideration of whether you have remedied your failings, the panel found that, although dishonesty is difficult to remediate, you have provided reflections and demonstrated insight into your misconduct, [PRIVATE] completed relevant training. The panel noted that you have been working as a nurse since your misconduct. You have provided the panel with a number of positive testimonials, including written and oral evidence from your clinical supervisor at work. Further, the panel accepted your evidence that you now exercise financial probity in relation to potential anomalies in your pay from your current employer.*

*In all the circumstances, the panel was satisfied that you have remediated your dishonest misconduct insofar as possible, that the risk of repetition is low and that a finding of impairment is not necessary on the ground of public protection.*

*The panel next considered whether a finding of impairment on public interest grounds was required. It 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 to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions. The panel determined that a finding of impairment on the ground of public interest was required. Although you have remediated your misconduct insofar as possible, your misconduct was a serious breach of trust involving successive acts of dishonesty over a period of 10 months, including the defrauding of the Trust for personal gain; the implication of junior colleagues; and misleading the local investigatory process. In the circumstances, members of the public would expect such misconduct to be marked by a finding of current impairment.*

*Accordingly, the panel concluded that your fitness to practise is currently impaired on the ground of public interest only.”*

The original panel determined the following with regard to sanction:

*“The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the misconduct. The panel decided that it would be neither proportionate nor in the public interest to take no further action. Misconduct of this nature requires a sanction.*

*The panel next considered whether a caution order would be appropriate, but concluded that a caution order would be inappropriate in view of the serious nature of your dishonest misconduct. The panel decided that a caution order would not be sufficient to address the public interest.*

*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. It considered that no useful purpose would be served by a conditions of practice order in circumstances where your misconduct is not of a clinical nature and there has been no finding of impairment on the ground of public protection. In all the circumstances the panel concluded that no workable conditions of practice could be formulated which would satisfy the public interest concerns.*

*The panel then went on to consider whether a suspension order would be an appropriate sanction. The panel considered that your misconduct was not a single incident, but rather was sustained over a period of 10 months. It considered that your misconduct does raise fundamental questions about your professionalism. However, the panel took into account the significant progress you have made since your misconduct. You have been working as a nurse for two years without concerns regarding your practice, and have provided positive*

*written testimonials from senior nursing colleagues and oral evidence from Mr 1, your clinical supervisor in your current role, attesting to your clinical skills and commitment to the nursing profession. You have demonstrated genuine remorse and detailed insight into why your actions were wrong and the impact they had on patients, colleagues and the wider nursing profession. Further, the panel took into account the context in which your misconduct occurred, including the difficult and stressful environment of the ward you were working on at the time, your significant financial debt and your lack of experience. Given your significant reflection and progress, the panel considered that there is no evidence of deep seated attitudinal concerns and decided that the public interest can be maintained without your removal from the register. In the circumstances, the panel considered that a suspension order would be appropriate and proportionate and would satisfy the public interest.*

*The panel gave serious consideration to a striking-off order, and considered that, given the seriousness of the misconduct, this case was finely balanced between a suspension and strike-off. However, given your significant remorse, insight, remediation, and overall progress since your misconduct occurred, it considered that a strike-off would be disproportionate. Further, the panel took into account the evidence attesting to your clinical skills and commitment to the nursing profession, and considered that it is in the public interest to allow a competent and passionate nurse to remain in practice.*

*The panel considered that a suspension order for a period of 12 months would be appropriate and proportionate to address the serious dishonesty in this case, whilst recognising the significant progress you have made.*

*The panel had regard to article 29(8A) of the Order*

*“(8A) If, at the time of making an order under paragraph (5)(b) or (c), the Fitness to Practise Committee is satisfied that, with effect from the date of the expiry of that order, it will not be necessary to—*

- (a) extend the period of the order;*
- (b) vary the order; or*
- (c) make any other order falling within article 29(5),*

*the Committee may decide that article 30(1) does not apply to that order.”*

*The panel considered that, given that the suspension order is to mark the public interest alone, it would be appropriate to allow the order to lapse upon expiry. A review of the order will therefore not be required before expiry. At the end of the period of suspension you will be allowed to practise unrestricted. However, the NMC will keep a record of the panel’s findings.”*

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

The panel has considered carefully whether your fitness to practise remains impaired. Whilst there is no statutory definition of fitness to practise, the NMC has defined fitness to practise as a registrant’s suitability to remain on the register without restriction. In considering this case, the panel has carried out a comprehensive review of the order in light of the current circumstances. Whilst it has noted the decision of the last panel, this panel has exercised its own judgement as to current impairment.

The panel has had regard to all the documentation before it, including the NMC bundle, your reflective statement and a number of positive testimonials. It has taken account of the submissions made by Ms Mohamed on behalf of the NMC and those made by Mr Meiland on your behalf.

Ms Mohamed outlined the background to the case and drew the panel’s attention to the relevant documentation before it. She invited the panel to review this case afresh in the light of all the material before it, submitting that the public interest has changed since the original panel imposed the suspension order, due to the COVID-19 pandemic. Ms Mohamed made submissions on the various aspects which comprise “the public interest” and explained the options which the panel might choose today in

the light of the unusual circumstances of the COVID-19 pandemic. She referred the panel to the substantive panel's decisions on impairment and sanction. She submitted that in light of the current circumstances, the NMC is asking the panel to consider whether the current order remains the appropriate and proportionate one in this case or whether to replace it with a different order.

The panel also had regard to Mr Meiland's submissions. He invited the panel to find that the public interest is such in the current climate that would justify this panel finding that the current suspension order is no longer necessary; the suspension order has the effect of preventing a competent and effective practitioner from returning to the frontline and helping patients and other nurses in a time of global crisis. Mr Meiland drew the panel's attention to the substantive panel's reasoning on why the order was imposed on public interest grounds alone. He submitted that the reasons for which the substantive panel decided public protection concerns were not involved in this case still remained.

Mr Meiland submitted that the current health emergency presents exceptional circumstances that justify a review of your case. He submitted that the current COVID-19 pandemic has changed many fundamental aspects of everyday life. He reminded the panel that the NMC as regulator has accepted that there is an unprecedented need for nurses to return to the front line, and to this effect previously retired nurses have also been called up to a temporary register. Mr Meiland submitted that the public interest concerns have now shifted from those before the original substantive panel.

Mr Meiland submitted that you have demonstrated clear remorse and insight into your misconduct. He submitted that you are a highly competent nurse, and invited this panel to have regard to a number of testimonials, which attest to your clinical competence.

Mr Meiland submitted that the remarkable change in outside circumstances justifies this panel taking a different approach and finding a different outcome to the previous substantive panel. He submitted that a member of the public, in receipt of all of the

facts of this case, would not lose confidence in the nursing profession if you were returned to unrestricted practice.

Mr Meiland submitted that he does not contest the matter of current impairment. However, he submitted that this panel, having found current impairment, may wish to revoke the order given the current circumstances as you have already served a suspension of just over two months. Mr Meiland invited the panel to consider, in the alternative, the possibility of imposing a caution order, which would continue to mark your dishonesty as unacceptable while also allowing you to return to work as a registered nurse. He submitted that a caution order of two years would be appropriate. Mr Meiland further submitted that the panel could alternatively impose a conditions of practice order with a condition to only work for your current employer. He accepted that conditions of practice orders are not generally suitable for public interest only cases.

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

In reaching its decision, the panel was mindful of the need to protect the public, maintain public confidence in the profession and to declare and uphold proper standards of conduct and performance.

The panel considered whether your fitness to practise remains impaired.

The panel reminded itself of the original panel's finding that your fitness to practise was impaired on public interest grounds alone. This panel had no reason to make a finding of current impairment on public protection grounds; indeed, from the information before this panel, you appear to be a competent and capable nurse.

This panel noted in relation to your insight through your work as a nurse up until your suspension and the relevant training you have undertaken, that you understand the serious nature of your misconduct. It accepted that in your reflective piece your remorse for your actions was both apparent and sincere. It considered that you demonstrated insight into the adverse effect of your actions on patients, colleagues,

and the wider nursing profession. At this hearing, the panel was of the same view. It had no new information regarding the change of position and was of the view that you had demonstrated a clear reflection through your latest reflective piece.

In its consideration of whether you have remediated your practice, the panel took into account that, although dishonesty is difficult to remediate, you have provided reflections and demonstrated insight into your misconduct, [PRIVATE], and successfully completed relevant training. You have provided the panel with a number of very positive testimonials from senior members of staff who attest to your clinical work.

The original panel determined that you were not likely to repeat matters of the kind found proved. Today's panel has received no information to undermine this position. In the light of this, this panel determined that you remain not likely to repeat matters of the kind found proved.

The panel turned its attention to matters of the public interest.

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 to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding proper professional standards for members of those professions. The panel determined that a finding of continued impairment on the ground of public interest was required. The panel appreciated that although you have remediated your misconduct insofar as possible, your misconduct was a serious breach of trust involving successive acts of dishonesty over a period of 10 months, including the defrauding of the Trust for personal gain; the implications for junior colleagues; and misleading the local investigatory process. The panel bore in mind that you have only served just over two months of the suspension order and this term is not long enough to mark the seriousness of the charges found proved. In the circumstances, the panel was of the view that members of the public would expect such misconduct to be marked by a finding of current impairment.

For these reasons, the panel finds that your fitness to practise remains impaired on public interest grounds alone.

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

Having found your fitness to practise currently impaired, the panel then considered what, if any, sanction it should impose in this case. The panel noted that its powers are set out in Article 30 of the Order. The panel has also taken into account the 'NMC's Sanctions Guidance' (SG) and has borne in mind that the purpose of a sanction is not to be punitive, though any sanction imposed may have a punitive effect.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where '*... the panel wishes to mark that the behaviour was unacceptable and must not happen again.*'

The panel noted that you have shown insight into your conduct. The panel noted that you had made admissions at the substantive hearing and apologised for your misconduct, showing evidence of genuine remorse. You have engaged with the NMC since the referral. The panel has been told that you are a competent nurse who is willing to work and assist on the front line during this global pandemic. The panel was of the view that the public interest in maintaining trust and confidence in the nursing profession and the NMC, and in declaring and upholding the expected professional standard of a registered nurse, would now be best served at a time of national crisis by returning a competent nurse to unrestricted practice. The panel therefore decided that a caution order is now the appropriate and proportionate sanction in your case.

The panel considered whether it would be proportionate to impose a more restrictive sanction and looked at a conditions of practice order. The panel concluded that no useful purpose would be served by a conditions of practice order. The panel noted that your misconduct is not of a clinical nature. It was also of the view that a conditions of practice order would be unnecessary and disproportionate, given your clinical competence and the fact that there are no public protection concerns in your case.

The panel has decided that a caution order for the remaining period of the original order would adequately mark the public interest. For the remainder of the original order, your employer - or any prospective employer - will be on notice that your fitness to practise had been found to be impaired and that your practice is subject to a restriction. Having considered the general principles above and looking at the totality of the findings on the evidence, the panel has determined that to impose a caution order for the remainder of the original order is the appropriate and proportionate response. It would mark not only the importance of maintaining public confidence in the profession, but also send the public and the profession a clear message about the standards required of a registered nurse.

The panel would wish to take this opportunity to commend your commitment to serving the public and your bravery in volunteering to serve in the front line of the health service during the pandemic.

At the end of this period the note on your entry in the register will be removed. However, the NMC will keep a record of the panel's finding that your fitness to practise had been found impaired. If the NMC receives a further allegation that your fitness to practise is impaired, the record of this panel's finding and decision will be made available to any practice committee that considers the further allegation.

This caution order will replace the current substantive suspension order with immediate effect in accordance with Articles 30(2) and 30(4)(d).

This will be confirmed to you in writing.

That concludes this determination.