

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

**Substantive Hearing
Tuesday 30 August 2022 – Friday 2 September 2022**

Virtual Hearing

Name of registrant: Clara Idowu Yemidale

NMC PIN: 02H07750

Part(s) of the register: Registered Nurse
Adult Nursing – August 2002

Relevant Location: Birmingham

Type of case: Misconduct

Panel members: Nicola Jackson (Chair, Lay member)
Jodie Jones (Registrant member)
Mel Swinnerton (Lay member)

Legal Assessor: Laura McGill

Hearings Coordinator: Dylan Easton (30 August 2022 & 2 September 2022)
Renee Melton-Klein (31 August 2022)
Jumu Ahmed (1 September 2022)

Nursing and Midwifery Council: Represented by Megan Millar, Case Presenter

Mrs Yemidale: Present and represented by Gabriel Adedeji, of Counsel, instructed by the Royal College of Nursing (RCN)

Facts proved: Charges 1, 2, 4, 5

Facts not proved: Charges 3, 6

Fitness to practise: Impaired

Sanction: Caution order (5 years)

Details of charge

That you, a registered nurse:

1. In January 2016, signed as accurate a reference for a colleague containing information that you were unable to confirm as accurate; **[Proved by admission]**
2. In May 2016, signed as accurate a reference for a colleague containing information that you were unable to confirm as accurate; **[Proved by admission]**
3. In March 2017, provided a reference for a colleague that was not accurate, in that; **[Not proved]**
 - a. The reference stated you were a band 7 nurse, when you were actually a band 5 nurse;
 - b. the reference stated you supervised the “candidate’s clinical practice” when you did not;
 - c. you had not worked with the candidate frequently enough to provide an accurate reference;
4. Your conduct at charge 1 was dishonest, in that your intention was for anyone reading the reference to believe that the information therein was accurate and that you were able to confirm the accuracy of said information; **[Proved by admission]**
5. Your conduct at charge 2 was dishonest, in that your intention was for anyone reading the reference to believe that the information therein was accurate and

that you were able to confirm the accuracy of said information; **[Proved by admission]**

6. Your conduct at charge 3 was dishonest, in that; **[Not proved]**
 - a. You signed and stamped the reference and confirmed to the MSI Group that you had completed the reference when you had not completed the reference;
 - b. Your intention was for anyone reading the reference to believe that the contents of the reference was accurate;

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

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Adedeji, who informed the panel that you made full admissions to charges 1, 2, 4 and 5.

The panel therefore finds charges 1, 2, 4 and 5 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 Ms Millar on behalf of the NMC and by Mr Adedeji on your behalf.

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 had sight of two witness statements, dated 26 February 2020 and 9 December 2020, from the following witness on behalf of the NMC:

- Witness 1: Deputy Associate Director of Nursing
at the University Hospitals
Birmingham NHS Foundation Trust
(‘the Trust’) at the time of the
incidents.

The panel has sight of a statement of evidence from you dated 29 August 2022 and also heard live evidence from you under oath.

Background

You were referred to the NMC on 13 June 2018 in relation to your practice as a Band 5 Staff Nurse at the University Hospitals Birmingham NHS Foundation Trust (‘the Trust’). The regulatory concerns identified and being investigated by the NMC were as follows:

1. Acting dishonestly in that you:
 - (a) Deliberately included incorrect information when completing one or more references for a colleague;
 - (b) Signed to say that the information included in one or more of these references was accurate, when you had not adequately checked the accuracy of the information.

It is alleged that you provided three references for [Mr 1], all of which included information that you could not verify. It is alleged that the last of the three references described you as a band 7 nurse when you were a band 5 nurse.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. In examining the evidence, the panel considered the witness and documentary evidence provided by both the NMC and Mr Adedeji on your behalf.

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

Charge 3

3. On March 2017, provided a reference for a colleague that was not accurate, in that;

- a. The reference stated you were a band 7 nurse, when you were actually a band 5 nurse;*
- b. the reference stated you supervised the “candidate’s clinical practice” when you did not;*
- c. you had not worked with the candidate frequently enough to provide an accurate reference;*

This charge is found NOT proved.

In reaching this decision, the panel took into account all of the oral and documentary evidence before it, including the signed references, email correspondence, and testimonies.

The panel considered that you gave consistent oral evidence under oath and appeared to be open and honest in relation to charges 1, 2, 4, and 5. The panel had sight of email correspondence and an interview transcript dated 28 May 2019 which noted an admission by [Mr 1] that he had completed Reference 3 and signed your name. The panel also heard oral evidence indicating that [Mr 1] had completed and signed either one or both signatures on the form of Reference 3. The panel noted that there was conflicting evidence about who stamped Reference 3.

The panel considered the email correspondence between you and the MSI Group in which the MSI compliance officer wrote to you on 29 March 2017 and said:

'I received the reference for [Mr 1], could you please confirm that you completed the attached form [Reference 3]?'

And you replied by email on the same day:

'Thanks, I did.'

The panel heard further evidence from you which was contradictory to this email, in that you explained that you may not have opened the attachment to the email and would not therefore have been aware that the email was referring to Reference 3. The panel heard no positive evidence to demonstrate that you were aware of the contents of the email attachment.

During submissions from both counsel the panel were referred to sample signatures which were contained in your statement of evidence. The panel was invited to compare the sample signatures with the signatures on Reference 3. The panel considered that, in the absence of evidence from handwriting experts, it was not in a position to reach any conclusion as to whether one of the signatures on Reference 3 was yours.

The panel concluded that there was insufficient evidence to support this charge. Therefore, the panel on the evidence before it and on the balance of probability found charge 3 (a) (b) and (c) not proved.

Charge 6

'6. Your conduct at charge 3 was dishonest, in that;

- a. *You signed and stamped the reference and confirmed to the MSI Group that you had completed the reference when you had not completed the reference;*
- b. *Your intention was for anyone reading the reference to believe that the contents of the reference was accurate;*

This charge is found NOT proved.

In reaching this decision, the panel took into account the evidence considered from charge 3 (a) (b) and (c). The panel determined that as the alleged incidents in charge 3 were not found proved, your conduct was not dishonest and therefore also finds charge 6 (a) and (b) not proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether 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 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 Millar invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives 2015' (the Code) in making its decision.

Ms Millar submitted that, at this stage, what constituted misconduct was a matter for the panel to determine. She told the panel that it is not for any of the parties to bear the burden to prove that misconduct was present. Ms Millar submitted that your fitness to practise is impaired by reason of your misconduct. She invited the panel to take into account the case of *Roylance v General Medical Council* when considering misconduct.

Ms Millar identified the specific, relevant standards where your actions amounted to misconduct. In relation to paragraph 13.3 of the Code ('Recognise and work within the limits of your competence'), she submitted that with the facts found proved, you failed to recognise and work within the limits of your competence. She referred the panel to paragraph 42 of Witness 1's witness statement dated 26 February 2020:

'Clara did not have the knowledge needed to complete these and comment on SA's practice. By providing these references, she has acted outside the competence of her role.'

Ms Millar submitted that this demonstrates that you were working out of your competence, therefore this section of the Code is engaged.

In relation to paragraph 20 of the Code ('Promote professional and trust'), Ms Millar submitted that that the panel found facts found proved for the dishonesty charges (charge 4 and 5). Therefore, paragraph 20.1, 20.2 and 20.8 is engaged. Ms Millar submitted that a registered nurse acting with honesty and integrity is a fundamental tenet of the nursing profession and with you providing two references dishonestly and in a misleading way, you did not uphold this key standard expected of you as a registered nurse. She further submitted that your conduct also demonstrated that you did not act as a role model for your junior colleagues when signing the two references. By signing the two references, without checking what was in the form, Ms Millar submitted that your actions fell significantly short of what was expected of you as a registered nurse.

Mr Adedeji provided written submissions for the panel:

- 3 *'CRHP v GMC and Biswas [2006] EWHC 464 (Admin) provides that only the facts are a matter for "proof", the other issues (misconduct and impairment) are matters of judgment for the Committee.*

- 4 *Similarly, the Court of Appeal in R (Campbell) v GMC [2005] EWCA Civ 250, noted that the Committee is required to make a fact finding decision, and then, as a separate exercise of judgment, to consider whether the facts admitted and proved were "not insufficient to support a finding of serious professional misconduct". If the Committee finds that the facts proved were not insufficient for that purpose, it should go on to consider whether the relevant facts actually do constitute serious professional misconduct.*

- ...

- 7 *The Committee is reminded that it would be wrong for them in making this assessment to consider any conduct which is not sufficiently serious to amount to misconduct.*

8. *It has been accepted by the Registrant from the outset that allowing [Mr 1] to complete the two reference forms and signing them off herself, effectively confirming that there were no live warnings on [Mr 1] disciplinary file, that he was not under investigation and that there were no outstanding safeguarding allegations against him, in circumstances where Ms Yemidale was not in a position to verify this and which was not known by her to be correct, could have had potentially catastrophic consequences and could have led to patient harm. She has also accepted that her actions were misleading and dishonest.*
9. *Against this however, it should be noted that there is no evidence of any actual harm occurring to patients in this case, however the risk of such harm occurring is accepted.*
10. *The Committee is also asked to take account of Ms Yemidale's reasons for signing the references. The Committee will recall Ms Yemidale's evidence on this in cross examination, namely:*

"It's because we are the same – we have the same faith. I thought he's somebody like me. I'm sorry, the deed is done now. I thought he was somebody honest – the way I accepted my own Christianity is you have to be honest, you have to be truthful... I thought [he was honest], but now I've learned my mistake."
11. *As such, it is submitted that the signing of the references was not borne of Ms Yemidale seeking personal gain, or to advance her own career or prospects, but instead to help someone who had been a long-term fellow church member in securing a job; one whose honesty she had naively relied upon. She also told the Committee she had not intended to be dishonest or mislead at the time, albeit she accepts in hindsight that she was in fact being both misleading and dishonest in signing the two references for [Mr 1].*

12. *It is also relevant, it is submitted, that Ms Yemidale did not merely take the completed forms and sign them, but, on her evidence to the Committee, did put the questions on the form to [Mr 1], as she stated, “just to check – this is what they said, have you done it and he said no. So, all those questions, I was asking him”.*
13. *Again, it is noted that Ms Yemidale naively and injudiciously relied on [Mr 1]’s word, in circumstances where she could not verify independently the truth of what she was being told and therefore acted irresponsibly, misleadingly (and therefore dishonestly) by doing so, knowing it would be submitted in support of his application for the role in question.*
14. *Finally, it is noted that, as with all allegations involving dishonesty, the conduct in question is undoubtedly serious, given the standards expected of those in the nursing profession. It is however submitted that this dishonesty is at the lower end of the scale of seriousness, given the lack of intent behind it.*
15. *Given the above, and in light of the facts found proved by way of admission, it is submitted that it is a matter for the Committee as to whether they are sufficient to amount to serious professional misconduct.’*

Mr Adedeji submitted that misconduct is a matter for the panel. He submitted that you accepted the serious nature of the concerns and recognised that as with any allegations involving dishonesty, it is a serious matter and a breach of a fundamental tenet of the nursing profession.

Submissions on impairment

Ms Millar 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 Millar submitted that all four limbs of the Dame Janet Smith test are engaged.

Regarding the first limb of the test, she submitted that whilst there is no evidence of any actual harm to patients, your actions had the potential to put patients at unwarranted risk of harm. She referred the panel to Witness 1's witness statement:

'... accurate and honest references are important to enable potential employers to fully assess an individual's skills and suitability for a role. Without this, there is a potential risk to patients.'

Ms Millar submitted that there was a clear risk to the public where individuals with disciplinary records or safeguarding concerns are given roles without their employers knowing about the risks.

Ms Millar submitted that as the dishonesty charges (charge 4 and 5) were found proved, limbs 2, 3 and 4 of the Dame Janet Smith test were also engaged. She submitted that nurses acting dishonestly and without integrity bring the medical profession into disrepute and that one of the most fundamental tenets of the nursing profession is to act with integrity.

Ms Millar submitted that your actions took place in 2016, and therefore it is for the panel to determine whether your conduct is likely to be repeated in the future. She submitted that *Grant* makes it clear that the panel should not only consider whether you continue to present a risk to the public, but to also consider the public interest ground.

Ms Millar referred the panel to the NMC's guidance 'Can the concern be addressed' (FTP-13A), which states:

'Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

...

- *dishonesty, particularly if it was serious and sustained over a period of time, or directly linked to the nurse, midwife or nursing associate's practice'*

Ms Millar submitted that the dishonesty concern is difficult to address and one that is not easily remediable. She submitted that you had acted dishonestly in two instances over a period of time in 2016.

Regarding insight, Ms Millar submitted that there is evidence that you have some insight. She submitted that it is for the panel to determine if the concerns had been remedied and whether the conduct is likely to be repeated. She invited the panel to take into account the testimonials and the training certificates. In respect of the training certificates, she submitted that they were signed off in 2020 and a number of those are only valid for a period of one year, therefore, they have expired. She further submitted that some of the training undertaken by you was not directly relevant to the charges, so therefore the panel may find those to be of limited assistance.

Mr Adedeji provided written submissions for the panel:

16. *As to impairment, the Committee is required to consider the risk of harm, the reputation of the profession, the breach of any fundamental tenets, as well as the issue of dishonesty.*

17. *Per R (Cohen) v GMC [2008] EWHC 581 (Admin), the relevant issues for consideration are: whether the conduct is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.*
18. *In relation to the first of these, i.e. whether the conduct is easily remediable, it is submitted that in the particular circumstances of this case, it is indeed remediable, even if not easily done. Any such remediation would need to be demonstrated through evidence of insight.*
19. *It is of significance where a charge has been denied as to whether there is insight on behalf of the Registrant. It is therefore submitted that it is also significant, as regards insight, where there has been full and early admission to charges, subsequently found proved, as is the case here. It is noted that Ms Yemidale made admissions to the Trust from the outset in relation to references "1" and "2" (and, as noted in my submissions at the facts stage, was said to have been cooperative with the Trust from the outset) and admitted the associated charges in at the outset of these proceedings before the Committee.*
20. *Ms Yemidale has furthermore recognised where she went wrong and that trusting someone to fill out their own reference and signing it on their behalf is "not the appropriate thing to do anyway" and that she would never again allow someone to fill a reference and then have her sign it for them. She has also clearly learned the distinction between professional and personal references and when it is and is not appropriate for her to complete one for someone.*
21. *The Committee is also asked to note Ms Yemidale's evidence that this was not in any event her usual practice at the time and that she "would have to have a look [at] the form and then see – I must have to know a bit [about] you before I signed something". Nonetheless, it is accepted that Ms*

Yemidale did have the requisite knowledge to either complete or sign off on [Mr 1]'s completed forms before doing so.

22. *Although the NMC's guidance indicates that conduct involving dishonesty is more difficult to remedy, it is submitted that such conduct can be remedied if understanding is gained into the reason for the dishonesty and the circumstances surrounding it.*
23. *It is further submitted that where the individual in question faces up to their wrongdoing and understands how and why it occurred, such that they are in a position to prevent it from occurring again (as was stated several times by Ms Yemidale in her evidence to the Committee), this conduct can be said to have been remedied.*
24. *Further, where a Registrant has insight into their actions, has expressed remorse and contrition from the outset and, it is shown that such dishonesty is out of character, and therefore not demonstrative of a longstanding or deep-rooted attitudinal issue, it is submitted that such conduct can be said to be highly unlikely to be repeated.*
25. *In support of this, it should be noted that Ms Yemidale is a nurse who has been on the NMC register for 20 years, since 2002, and who, at the time had worked for the trust for some 14 years (from 2004 to 2019) without incident, and that this was the first occasion on which any concerns were raised against her.*
26. *The Committee have heard evidence that Ms Yemidale is a church-going Christian of strong convictions who was clear that she would not knowingly lie and the Committee has further had sight of a slew of personal references and testimonials from fellow members of the nursing and medical professions, who all attest to her integrity, probity and character. It is*

noteworthy that that fellow professionals regard her as honest, notwithstanding these charges, which they confirm knowledge of.

27. *As such, it is submitted that Ms Yemidale's actions in this case were an aberration and are not demonstrative of her character. It is therefore submitted that this is conduct which, especially given the salutary lesson she has learned, is extremely unlikely to be repeated by her. As she told the Committee in her evidence:*

"For trusting someone to fill it and for me to sign it. I will never, never do that [again]...I know that's not the appropriate thing to do anyway. I've learned my mistake. I've learned in a hard way."

28. *When asked by the Committee in its questions to her following cross examination what she would do differently if asked to complete a reference now, the Committee will recall that Ms Yemidale stated"*

"I would check to see if can answer [the] questions. If I cannot, I would refer them to a senior manager who would be in a position [to do so]. I would never do something like this again from what I've been through."

29. *As to the risks around her actions and the importance of accurate references, the Committee will recall Ms Yemidale's response to its question:*

"It's very important as it's a profession that deals with life. If anything goes wrong it can claim life. Someone can die from it and you can deprive someone of their life or their care, most especially in relation to nursing."

30. *The charges cover allegations which are now somewhat historic, given that these incidents date back to early 2016, some 7 years ago. This notwithstanding, in her original written response to the charges, in 2019, the*

Committee will note that Ms Yemidale expressed contrition and remorse for her actions and has never sought to distance herself from her own failings.

31. *As such, it is submitted that she has had adequate time to reflect fully, gain full insight into her conduct and to remediate accordingly.*

32. *Further, the Committee is referred to Ms Yemidale's witness statement as to the current position as follows:*
 - a. *Going forward, I will first obtain an understanding of the form presented to me and what is required of me before taking any action. Following this, I will consider whether or not I am in a position to provide a reference, such as whether I have sufficient knowledge of the person's work and conduct record. If I am not in a position to do so, I will decline the request.*

 - b. *I have learnt to be more careful when giving references to others by applying professional scepticism and where I am unable to verify the information in the reference, to consult with appropriate personnel at work before taking any action. If I do not have knowledge of the individual's work or conduct record, I would not sign anything indicating that I did or that they were competent.*

 - c. *Having reflected on my conduct and discussed with my legal representative I understand how this conduct is dishonest. I acted negligently in signing a reference which had inaccurate contents, and this is a dishonest act. A reference is an important document which is relied upon as accurate.*

Signing a reference which contains information that cannot be confirmed as accurate is dishonest because it can be misleading and

does not provide a true representation of the candidate's capabilities particularly when the information has not been verified. I am deeply sorry about what has happened as a result of my actions. I truly had no intention on misleading anyone. At the time I signed the reference, I believed I was acting in good faith and providing the reference in a personal capacity, as well as this, I was not aware of any hospital policy on giving references. The enormity of me providing the reference only became known to me during the investigation process. Since then, I have had time to reflect on this and certain that I would never do so again.

- d. *I have made a decision to admit this allegation because although I did not set out to deceive anyone, I understand that the contents of the reference I signed was inaccurate and therefore dishonest, however there was no intention for dishonesty on my part and I am sincerely sorry for the implication on my personal character and my profession.*

I have considered the purpose of references. And I understand that they are important because they validate and corroborate what is detailed in a candidate's CV and any information they may have informed a recruiter during the application and selection process. A reference is relied upon by those receiving it because they do not have prior knowledge of the candidate, their abilities, character and qualities, therefore they will rely and trust the information presented by the referee and consider this in their decision making process when making an offer for a position.

I have learnt a big lesson from this incidence and have reflected seriously on this and my responsibilities to my employer, colleagues and the great nursing profession. I am sincerely sorry for the lapses in my judgement to

not carry out a thorough check of the reference form before it was completed.¹²

33. *Finally, the Committee is asked to take note of Ms Yemidale's four-page reflection, in which she explores issues of accountability, negligence, the potential impact on the reputation of the nursing profession, as well as on patients and colleagues, and in which she expresses her deep remorse for her actions. It is not proposed to go through this reflection in detail in these submissions as it is before the Committee. The Committee is therefore respectfully implored to consider this reflection in full in its deliberations.*
34. *It is therefore submitted that Ms Yemidale has clear insight into her actions in this case and has reflected on them deeply and changed how and what she would do as a result if in a similar situation.*
35. *It is submitted that a finding that there is no current impairment for a nurse such as Ms Yemidale, who has insight and has, it is submitted, remediated her wrongdoing of 7 years ago, would not offend the public interest.*
36. *In light of the above, the Committee is therefore invited to find that Ms Yemidale's fitness to practise is not currently impaired.'*

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council*, *Zgymunt v GMC* [2008] EWCH 2643, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), and *R (Cohen) v GMC* [2008] EWHC 581 (Admin).

Decision and reasons on misconduct

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

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 a breach of the Code. Specifically:

'13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

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

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 ...

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. It had regard to the case of *Roylance v General Medical Council* 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 panel determined that your actions in each of the individual charges did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. It was of the view that although there was no evidence of actual patient harm, it had the potential to cause significant harm. The panel noted that there were two specific acts of dishonesty and was of the view that you are an experienced registered nurse who should have the knowledge that you were not competent to have signed the reference form.

Further, it determined that your conduct which included dishonesty breached fundamental tenets of the Code. The panel was also of the view that your conduct was very serious and would be considered as unacceptable by fellow practitioners.

On the basis of the above, the panel determined that your conduct and dishonest behaviour fell significantly short of the standards expected of a registered nurse and is sufficiently serious to amount 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.

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 concluded that all four limbs of this test were engaged.

Whilst there is no evidence to suggest that your actions caused actual harm to patients, your conduct had the potential to put patients at risk of significant harm. Furthermore, having breached multiple provisions of the Code, the panel determined that your

misconduct had breached fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find your fitness to practise to be impaired and the charges relating to dishonesty as extremely serious.

The panel also took into account the questions identified in *Cohen v General Medical Council*, namely whether the conduct which led to the charges is easily remediable, whether it has been remedied and whether it is highly unlikely to be repeated.

In considering whether you have strengthened your practice, the panel noted the evidence before it. The panel was of the view that you had taken significant steps to address the concerns. It bore in mind that dishonesty is often more difficult to remediate than clinical concerns. However, it noted that, in the particular circumstances of your case, it can be remediated.

The panel also took into account your reflective statement. It was of the view that you had demonstrated a strong reflection of the concerns and had clear remorse.

In relation to your insight, the panel was of the view that you had sufficient insight. It was of the view that you had addressed the impact your actions had on your employer, the nursing profession and the wider public as a whole.

The panel took into account your oral evidence where you stated:

'I would have look at form and see if I'm entitled to give reference, whether it is character or work reference. If no way to verify, give to Senior or Manager to take a look. Will be more careful and vigilant.'

It also took into account from your witness statement:

'Going forward, I will first obtain an understanding of the form presented to me and what is required of me before taking any action. Following this, I will consider whether or not I am in a position to provide a reference, such as whether I have sufficient knowledge of the person's work and conduct record. If I am not in a position to do so, I will decline the request'

[...]

'I have learnt to be more careful when giving references to others by applying professional scepticism and where I am unable to verify the information in the reference, to consult with appropriate personnels at work before taking any action. If I do not have knowledge of the individual's work or conduct record, I would not sign anything indicating that I did or that they were competent.'

The panel also noted from your reflection statement:

'In future I will also carefully read the requirements of the reference to be provided and first of all understand the nature of the reference i.e., whether it is a work or character reference. Where it is a work reference, I would then consider my role & responsibility at work and decipher whether I have the authority to act in such capacity. I will also remind myself of the core values and staff code of conduct of the NHS (i.e., accountability) that underpins my behaviour as a Staff Nurse. This would thereby guide my actions.'

The panel was of the view that you are a highly competent nurse with a long career, 20 years or so, with an unblemished record before this referral. The panel took into account the positive testimonials provided by your colleague and noted that you have not had any other concerns. The panel considered that there is minimal risk of repetition.

As there was no evidence of any concerns with your clinical practice, the panel determined that your fitness to practise was not currently impaired on public protection grounds.

The panel bore in mind the overarching objective of the NMC to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that public confidence in the profession would be undermined if a finding of impairment were not made in this case. Therefore, the panel determined that your fitness to practise is impaired on the grounds of public interest only.

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

Sanction

The panel considered this case very carefully and decided to make a caution order for a period of five years. The effect of this order is that your name on the NMC register will show that you are subject to a caution order and anyone who enquires about your registration will be informed of this order.

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 Millar referred the panel to the SG and drew the panel to what the NMC considered to be the aggravating and mitigating features of the case. She submitted that your behaviour

was not at the lower end of the spectrum and therefore no further action or a caution order would not be appropriate. She submitted that the dishonesty concerns cannot be addressed by a conditions of practice order as it would be difficult to formulate workable conditions. She submitted that given the circumstances of this case, namely your insight and good practice, a striking-off order would not be an appropriate or proportionate sanction. She therefore submitted given the facts of this case, a suspension order is the most appropriate sanction in order to address the public interest concerns and maintain public confidence and professional standards.

The panel also bore in mind submissions from Mr Adedeji on your behalf. He submitted that you have been on the NMC register for 20 years, without incident, and that this was the first occasion on which any concerns were raised against you. He submitted that your misconduct is at the lower end of spectrum of seriousness and that a suspension order or striking-off order would be wholly disproportionate. He submitted that, in light of your insight and remediation, a caution order would be appropriate and would adequately mark the public interest in this case. Mr Adedeji acknowledged that a lengthier caution order may be appropriate to adequately mark the public interest in this 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:

- Pattern of misconduct, albeit two related incidents within a short period of time in 2016; and

- Charges found proved relate to dishonesty.

The panel also took into account the following mitigating features:

- Early and full admissions to the charges found proved;
- Evidence of substantial insight and an understanding of the significance of your actions;
- Evidence of efforts to put the problem right, including in-depth and sincere reflection;
- Evidence of good clinical practice and efforts to keep up to date with training; and
- The number of positive testimonials regarding your practice and character.

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 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 noted that you have shown significant insight into your conduct. The panel noted that you made early admissions and apologised for your misconduct, showing evidence of genuine remorse and deep reflection. The panel also considered that there was no attempt to make any personal gain in your actions and that there have been no adverse findings in relation to your practice either before or since these incidents and that you are otherwise a good and highly competent nurse of many years' standing. The panel also took into account that you have made clear assurances that such actions would not happen again. Further, the panel considered the degree of dishonesty in this case, and it determined that the dishonesty was towards the lower end of the spectrum of seriousness.

The panel considered whether to impose a more restrictive sanction and looked at a conditions of practice order. It determined that this order would not be appropriate in light of its finding of impairment solely on public interest grounds and because there are no public protection concerns in this case. It decided that there are no workable conditions that could be formulated to address the public interest concerns in this case and the nature of these dishonesty findings.

The panel next considered whether to impose a suspension order and had careful regard to the SG in respect of suspension. The panel carefully considered the submissions of Ms Millar in relation to this sanction that the NMC was seeking in this case. However, the panel considered that a suspension order would be disproportionate in light of your insight, your reflection and your good clinical practice. The panel considered that the public interest would not be served by suspending a nurse who shows such remorse, is highly regarded by her current employer and her professional colleagues and where there is minimal risk of repetition of the conduct.

The panel decided that a suspension order would be disproportionate given the nature and context of this case and determined that it would not be in the public interest to suspend an otherwise good and experienced nurse.

The panel has decided that a caution order for the maximum period of five years would adequately mark the public interest in this case. For this period, 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 this sanction. 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 a period of five years would be 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.

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 decision will be confirmed to you in writing.

That concludes this determination.