

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

Substantive Hearing

Tuesday 30 July – Thursday 8 August 2024

Virtual Hearing

Name of Registrant: Kelly Ann Mano

NMC PIN: 07B0268E

Part(s) of the register: Registered Nurse – Sub Part 1
Adult Nursing – 29 January 2007

Relevant Location: Plymouth City

Type of case: Misconduct

Panel members: Catherine Devonport (Chair, registrant member)
Lisa Holcroft (Registrant member)
Stacey Patel (Lay member)

Legal Assessor: Oliver Wise 30 – 31 July 2024
Breige Gilmore 1 – 8 August 2024

Hearings Coordinator: Ruth Bass

Nursing and Midwifery Council: Represented by Hugo Lodge, Counsel instructed by the NMC

Miss Mano: Not present and unrepresented

Facts proved: Charges 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11

Facts not proved: None

Fitness to practise: Impaired

Sanction: Strike off

Interim order: Interim suspension order 18 months

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Mano was not in attendance and that the Notice of Hearing letter had been sent to her registered email address by secure email on 6 June 2024.

Mr Lodge, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rule 11 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor, who confirmed that good service had been effected.

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

In light of all of the information available, the panel was satisfied that Miss Mano has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Miss Mano

The panel next considered whether it should proceed in the absence of Miss Mano. It had regard to Rule 21 and heard the submissions of Mr Lodge who invited the panel to continue in the absence of Miss Mano.

Mr Lodge submitted that the expeditious disposal of this case was in the public interest. He submitted that there would be considerable inconvenience to the witnesses should the hearing not go ahead, as there had been issues with securing the attendance of two

of the witnesses. Mr Lodge further submitted that Miss Mano had not given any reason for her non-attendance. He referred the panel to the proceeding in absence bundle and highlighted the numerous emails and telephone calls that had been made to Miss Mano by the NMC, to which there had been no response. Mr Lodge submitted that Miss Mano had waived her right to be present, and further, that a fair hearing could be had in any event with this panel.

The panel accepted the advice of the legal assessor who made reference to the cases of *R v Jones* [2006] UKHL 6 (*Jones*), *Tait v RCVS* [2003] UKPC 34 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 (*Adeogba*).

The panel noted its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21.

The panel has decided to proceed in the absence of Miss Mano. In reaching this decision, the panel has considered the submissions of Mr Lodge, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *Jones* and *Adeogba* and had regard to the overall interests of justice and fairness to all parties. The main considerations were:

- No application for an adjournment has been made by Miss Mano;
- Miss Mano has not engaged with the NMC and has not responded to any of the letters or telephone messages left for her attempting to secure her engagement;
- There is no reason to suppose that adjourning would secure Miss Mano's attendance at a future date;
- Three witnesses are due to give evidence;
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2021 and 2022;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

The panel acknowledged that there is some disadvantage to Miss Mano in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Miss Mano at her registered address, she will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Miss Mano's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Details of charge

'That you, a registered nurse:

1) On 31 July 2021 failed to take any action after receiving notification that [PRIVATE] had tested positive for COVID-19.

2) On or around 12 August 2021 deleted the notification email referenced at charge 1.

3) Your conduct at charge 2 was dishonest in that you intended to cover up that you had received notification of the positive test result.

4) *Between June 2022 and 16 September 2022 failed to disclose your DBS barring decision to your employer and carried out work that you were barred to do.*

5) *Your conduct at charge 4 was dishonest as you knew you had been barred by DBS and were seeking to conceal this from your employer.*

6) *In January 2022 were asked by Colleague B if you were subject to any NMC fitness to practise investigations and stated that you were not.*

7) *Your conduct at charge 6 was dishonest in that you knew you were subject to an NMC fitness to practise investigation.*

8) *Between April 2022 – June 2022 did not complete an application for a DBS despite being asked by Colleague B to do so.*

9) *Your conduct at charge 8 lacked integrity as you were seeking to delay your DBS status coming to light.*

10) *On 16 September 2022 told Colleague B that you were not aware of NMC investigations and being barred by DBS.*

11) *Your conduct at charge 10 was dishonest in that you were aware of an NMC investigation and your barred status for DBS.*

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Hugo to allow the written statement of Ms 1 into evidence. Ms 1 was not present at this hearing.

Mr Lodge submitted that Ms 2's statement produced business records and letters sent by the NMC and the Disclosure and Barring Service (DBS) to Miss Mano, and screen shots. He submitted that it was perfectly normal for such documents to be accepted as hearsay.

Mr Lodge, referred the panel to the two telephone notes exhibited in Ms 1's statement, and acknowledged that this was not the same as the letters and emails that had been exhibited. However, he reminded the panel that the telephone attendance notes recorded conversations with Colleague B, who the panel had heard live evidence from.

Mr Lodge submitted that all of the exhibits had been served on Miss Mano. He informed the panel that there had been correspondence from the NMC to Miss Mano asking if she objected to the statement going before the panel, and to which there had been no response.

Mr Lodge submitted that the hearsay evidence is admissible. He submitted that it was not the sole and decisive evidence, it only exhibits other evidence, and that the letters and emails were demonstrably reliable.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 of the Rules provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred the panel to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (*Thorneycroft*) and the principles set out therein.

The panel first considered the relevance of the statement. It had regard to the fact that the statement set out the chronology of communication from the DBS and the conversations between Miss Mano and Colleague B, and was satisfied that the witness statement of Ms 1 was relevant.

In considering fairness, the panel took into account the fact that the purpose of Ms 1's witness statement was to exhibit documents that were factual in nature; namely, a

series of letters, emails and screenshots. The panel determined that the documents were not controversial, taking into account that there was no evidence of the documents having been contested, and there was no suggestion that Miss Mano had not been barred from working with children and adults. The panel was of the view that the witness statement was record producing in nature and factual. The panel was satisfied that Miss Mano was aware of the content of the documents, noting that the letters came from the DBS and the NMC, and were official documents that had been addressed to her. It was satisfied that the documents were demonstrably reliable of communications sent, including the emails.

The panel noted that no reason was given by Mr Lodge for Ms 1's non-attendance. However, the panel was satisfied, due to the purely exhibiting nature of the statement, that it would still be fair to admit the statement as hearsay.

With regard to the two exhibited telephone attendance notes, the panel was satisfied that it would be both relevant and fair to admit, having taken into account the fact that it had heard live evidence from Colleague B who confirmed the phone call, and its content, during her evidence.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of Ms 1, but it would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

Miss Mano was employed as a registered home manager at Elburton Heights Care Home (the Home) between 5 February 2018 and 31 August 2021.

As part of her role, Miss Mano received COVID-19 polymerase chain reaction (PCR) test results for staff members to her mobile phone and email account. Miss Mano was responsible for advising staff of their positive PCR results and ensuring that they isolated. It is alleged that on 31 July 2021, NHS Test and Trace sent [PRIVATE]'s test results to Miss Mano's email address and mobile phone and Miss Mano failed to inform

[PRIVATE] of their positive COVID-19 test. [PRIVATE] continued to work their normal shifts. On 5, 8 and 11 August 2021 three residents tested positive for COVID-19, there was no link made between [PRIVATE]'s test result and the residents' test results.

A disciplinary hearing was scheduled for 2 September 2021; however it did not proceed due to Miss Mano's resignation on 31 August 2021 with immediate effect.

Miss Mano commenced employment in a consultancy and leadership role at the Artene Care Agency (the Agency) at some point in August 2021.

On 2 September 2021, Miss Mano's previous employer, the Home, made a referral to the NMC in relation to concerns arising from her employment at the Home, and notified the Disclosure Barring Service (DBS) of the same concerns on 16 September 2021.

On 8 September 2021, Miss Mano was notified by the NMC that they were investigating a referral in relation to their fitness to practise.

In January 2022 it is alleged that Miss Mano's employer then, Colleague B, [PRIVATE], asked Miss Mano if she was subject to any NMC fitness to practise investigations and Miss Mano responded that she was not.

On 28 June 2022, the DBS wrote to Miss Mano confirming that she was subject to a DBS barring decision and listed on the barred Children's list and Adults' list, preventing her from working with children and vulnerable adults as a registered nurse. It is alleged that Miss Mano failed to inform the Agency that she was subject to an NMC investigation and had been barred as per the DBS decision.

Decision and reasons on facts

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

The panel has drawn no adverse inference from the non-attendance of Miss Mano.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

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

- [PRIVATE]: [PRIVATE].
- Colleague B: [PRIVATE].
- Witness 2: [PRIVATE].

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC, and the NMC guidance 'Making decisions on dishonesty charges and the professional duty of candour' DMA-8.

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

Charge 1

'On 31 July 2021 failed to take any action after receiving notification that [PRIVATE] had tested positive for COVID-19.'

This charge is found proved.

In considering this charge, the panel had regard to the Job description of the Home Manager, the Home's policies, the local 'Witness Interview Statement' of Miss Mano dated 16 August 2021, the oral and written evidence of [PRIVATE] and Witness 2.

In making its decision, the panel first considered whether Miss Mano had a duty to take action following receiving a notification that [PRIVATE] had tested positive for COVID-19.

The panel had regard to the job description for the Home Manager and the Home's policies and noted that there was no specific duty for the Home Manager (Miss Mano) to deal with notifications for people who had tested positive for COVID-19 within the Home. However, the panel heard evidence from [PRIVATE] and Witness 2 that there was a system set up in the Home, where the Home Manager received all positive notifications for COVID-19 tests and would record the outcome in a matrix.

The panel next had regard to the local interview statement of Miss Mano dated 16 August 2021, wherein she set out the process for checking incoming COVID-19 results for staff members and stated:

- ‘- *Staff complete LFD (sic) test independently.*
- *Staff complete PCR tests weekly on a Thursday and these are recorded on the system by [PRIVATE], Home Administrator (mostly). [PRIVATE] then adds to the matrix.*
- *Results are set to be sent to my email address and mobile.*
- *Staff results come through to my mobile, so I check straight away.*
- *Any positive results that are received, I forward to the staff member straight away as they don't know the result unless I tell them...*
- *In my email account I have archive boxes for 'staff swabbing' and 'staff results' I move the emails over into these boxes.*
- *Staff are not permitted to work is (sic) positive and advised to isolate for 10 days.*

...

I use the matrix created by [PRIVATE] for uploading tests, I go through the matrix and place a 'tick' next to their name once the results are received. This way I know how (sic) I have results for and who I am still waiting on.'

The panel noted from Miss Mano's response that she was aware that her communication in forwarding the results to staff members was the only way in which those staff members would be made aware of their results.

The panel also heard evidence from [PRIVATE] and Witness 2 that all positive COVID-19 results were sent to Miss Mano's email address at the Home.

The panel was satisfied from Miss Mano's local 'Witness Interview Statement', and the evidence of [PRIVATE] and Witness 2 that Miss Mano as part of her role as Home Manager, had taken on the duty to receive and record and inform staff members of positive COVID-19 test results. The panel therefore determined that, as the manager of a care home caring for vulnerable residents during the COVID-19 pandemic where Miss Mano was the named person set up to receive positive COVID-19 test results, there was an implied duty for Miss Mano to take action following any positive COVID-19 results.

The panel next considered whether Miss Mano had failed to take action. It had regard to two emails from NHS COVID-19 Notification dated 31 July 2021 and sent to 'Elburton Heights Manager' (Miss Mano) which respectively state:

'Hello [PRIVATE]

Test date: 29 July 2021

Your recent coronavirus test has come back positive...'

And

'Dear [PRIVATE],

We noticed that you have not yet responded to the email we recently sent you about providing us with important information to help us control the spread of coronavirus (COVID-19)...'

The panel had regard to the fact that these two emails, notifying that [PRIVATE] had tested positive for COVID-19' had been sent to Miss Mano's email address at the Home.

The panel had regard to the witness statement of Witness 2 who gave evidence that on 9 August 2021 during a shift handover, Miss Mano had provided an update to her that three residents had tested positive for COVID-19, but that there had been no mention of staff having tested positive. The panel was satisfied that on balance Miss Mano was receiving notifications from the NHS test and trace service, and was satisfied that Miss Mano had received the email notifications in relation to [PRIVATE] on 31 July 2021 also.

The panel had regard to Miss Mano's local 'Witness Interview Statement', wherein she set out the process for receiving positive COVID-19 test results. The panel was satisfied that Miss Mano had a robust system in place for managing COVID-19 testing within the Home, and for which she was responsible for actioning any positive results.

The panel had regard to the NMC witness statement of [PRIVATE], which states:

11. I cannot recall the exact date when I took the COVID-19 test relevant to the incident, but I recall it was around 1 August 2022 (as I recall receiving the test results on 12 August 2022, and that this was after 10 days from when I took the test). The nearest Thursday (after 10 days prior to 12 August 2021) was 29 July 2021, so this was most likely the date I took the test, but I could not say for certain if this was the date of the test.

12. I recall finding out the results from the COVID-19 test on 12 August 2022 at around 15:00, when the [PRIVATE], [Witness 2], received an email directly from the NHS with a tracker of the test results from the earlier tests ([Witness 2] was using Ms Mano's laptop as Ms Mano was out of office, and [Witness 2] was deputising as the Home Manger in Ms Mano's absence. I recall Ms Mano was on annual leave at this time.

13. I was in the same room as [Witness 2] when they reviewed the email, and I reviewed the email at the same time as [Witness 2]. The email stated the test results for staff member "[PRIVATE]", age [...], was positive for COVID-19. After a few moments, we realised that this entry was referring to me, and that I had returned a positive COVID-19 test from when I took the test over 10 days prior to 12 August 2022. I had not been notified, nor received any communication from Ms Mano about the results from the COVID-19 testing. The Home Manager (Ms Mano) receives the results, and they should have notified me of the positive result.'

Further, [PRIVATE], in his oral evidence gave clear evidence that he became aware of his positive COVID-19 test result by chance and that he had not been informed by Miss Mano.

The panel also had regard to Witness 2's NMC witness statement which states:

15. On 12 August 2021, after receiving [Ms 3's] email I was looking through the line list on the Home Manager's laptop (i.e. the laptop Ms Mano would ordinarily use) when [PRIVATE], the Administrator, entered the office. We reviewed the line list together and noticed that one column read that "[PRIVATE]", age [...], was positive for COVID-19. This was in relation to a test taken on 29 July 2021 and related to [PRIVATE]. It is not normal to receive test results so long after the test was sent off, and the usual practice is that, when we take the tests every Thursday, we will usually receive the results back on Friday morning (the next day). The assumption was that Ms Mano had received the test result for [PRIVATE] on an earlier date but had failed to make [PRIVATE] aware of it. This concern was internally investigated,

as discussed below. [PRIVATE] was angry when they saw the list, and stated that they were unaware they had (or had recently had) COVID-19, and they had still been coming in to work...'

The panel found Witness 2's oral account supported the evidence set out in her witness statement. In her oral evidence, Witness 2 stated that Miss Mano should have instructed [PRIVATE] to isolate as there were vulnerable people at the Home. The evidence before the panel was that Miss Mano had not informed [PRIVATE] of his positive result nor instructed him to isolate.

Although there was no evidence of the emails dated 31 July 2021 having been read by Miss Mano, the panel was satisfied that there was sufficient information before it, namely the robust reporting system for positive COVID-19 results administered by Miss Mano; and the fact that the emails had been sent to her work email address, to find on the balance of probabilities that Miss Mano had received the emails notifying her of [PRIVATE]'s positive result. Furthermore, the panel was satisfied, based on the evidence before it, that Miss Mano had failed in her duty to take any action after receiving notification that [PRIVATE] had tested positive for COVID-19. It therefore found charge 1 proved.

Charge 2

'On or around 12 August 2021 deleted the notification email referenced at charge 1.'

This charge is found proved.

In considering this charge, the panel had regard to the evidence of Witness 2, Miss Mano's local 'Witness Interview Statement' and the oral evidence of [PRIVATE].

The panel had regard to Witness 2's witness statement which states:

'16. I was reviewing [Ms 3's] email again on the same day on the Home Manager's laptop, when [Ms 4], a [PRIVATE] at the Home, came into the office. [PRIVATE] had since left the office at this time. They were interested to see the results as they had swabbed the residents on the weekend. However, as we had the email open, the email suddenly disappeared. Neither I nor [Ms 4] had our hands on the laptop, and we were both confused about what had happened. I clicked on the "deleted items" folder (as seen at appendix 17 of Exhibit Witness 2) and I found the email [Ms 3] had forwarded to the Home Manager's email address.'

The panel also had regard to Witness 2's oral evidence where she re-iterated that she was sure that she did not delete the email by accident. The panel found Witness 2's evidence in this regard to be clear, stating that neither her hands or her colleagues were near the laptop or mouse when the email disappeared.

The panel also had regard to the evidence of Witness 2 that Miss Mano could access her emails from home. It also had regard to Miss Mano's 'Witness Interview Statement' dated 19 August 2021, where in response to the question *'Did you delete work emails from Elburton Managers outlook account whilst on annual leave between 09/08/2021 – 15/08/2021? This could be access from your mobile phone'*, Miss Mano replied:

'the (sic) come up on the phone and I can swipe them across I don't believe this deletes them though.'

The panel was satisfied from the evidence of Witness 2 and Miss Mano, that Miss Mano could access her work email account from home.

The panel next considered the possibility of the email having been deleted by someone else. It had regard to Miss Mano's local 'Witness Interview Statement' which states:

- '- Everyone has access to my laptop and email, Unit Managers, Nurses, Admin, Deputy on a daily basis.*
- This is for use of 'Microsoft Teams' when an MDT meeting is scheduled.*

- *I don't leave programmes open though, I just open the Teams app. I do tell the nurses and unit managers not to look through my laptop and the purpose is just for these meetings.*
- *I have all my files stored on my laptop, so nothing is left open.*
- *However, I don't always close the programmes if [PRIVATE] is using my laptop.*
- ...'

The panel noted Miss Mano's case that some colleagues would have access to her laptop for the purposes of multi-disciplinary team (MDT) meetings, and solely for the uses of Microsoft Teams meetings. The panel found Miss Mano's evidence in this regard slightly contradictory; on the one hand saying that all staff had access to her laptop and emails and then later stating that other staff members only had access to Microsoft Teams for MDT Meetings.

However, Witness 2 gave evidence to the panel that she was the only staff member that had email access to Miss Mano's laptop only when Miss Mano was on leave.

[PRIVATE] gave evidence to the panel that he was not aware of any MDT's taking place during the time of the incident and did not think anyone had access to Miss Mano's laptop.

The panel also had regard to Witness 2's NMC witness statement, which states:

'I was the only person at the Home who could access Ms Mano's Home Manager account, as I was using their work laptop whilst Ms Mano was on annual leave. The only other occasions when someone else would use Ms Mano's work laptop would be if a Unit Manager at the Home needed to use the laptop to join a Multi-Disciplinary Team meeting. In these circumstances, the Unit Manager's would not have the password for Ms Mano's work laptop. I also note from the investigation report that [Ms 5] found there were no scheduled Multi-Disciplinary Meetings from 31 July 2021 to 1 (sic) August 2021. (Please note that paragraph 15 of Witness 2's statement refers to the 12 August 2021).

Whilst Ms Mano was on leave, I was using Ms Mano's work laptop on a daily basis to complete forms which need to be completed on a daily basis. Whilst Ms Mano was on annual leave. it was mine and [PRIVATE]'s responsibility to review any COVID-19 test results.

I am aware that Ms Mano has access to their emails from home, as they have often come into work after being on leave with knowledge of emails which have been received to the Home Manager email address.'

The panel found there was some consensus between Miss Mano's evidence and Witness 2's, that access to Miss Mano's laptop was granted for the purpose of MDT meetings. The panel had regard to the evidence that no MDT meetings had been scheduled between 31 July 2021 and 12 August 2021.

The panel had further regard to the local Investigation report which states:

- *'Further questions for [Witness 2]. Appendix 9.*
- *Sent by email due to [Witness 2] being on Annual Leave at this time. [Witness 2] advised that she does not usually have access to the managers laptop/emails nor do the nurses but had access only between 09/08/2021-13/8/2021 as Kelly was on Annual Leave. [Witness 2] advised she did not have the password to Kelly's laptop before this date.'*

The panel was satisfied on the balance of probabilities, from the evidence before it, that no one other than Witness 2 had access to Miss Mano's laptop during 9 August 2021 and 13 August 2021 while Miss Mano was on annual leave. Witness 2's evidence was corroborated by [PRIVATE], and Miss Mano's evidence was contradictory as set out above.

Having heard that Miss Mano was able to access her work email account from home, and having accepted that no one other than Witness 2 had access to Miss Mano's laptop on 12 August 2021 (when Witness 2 witnessed the email disappear), the panel was satisfied on the balance of probabilities, that Miss Mano did delete the notification

email referenced at charge 1 at or around 12 August 2021. The panel therefore found charge 2 proved.

Charge 3

‘Your conduct at charge 2 was dishonest in that you intended to cover up that you had received notification of the positive test result.’

This charge is found proved.

In considering this charge, the panel had regard to Witness 2’s evidence that on 9 August 2021, Miss Mano had informed Witness 2 of the positive test results in respect of three residents. The panel accepted this evidence and was satisfied on the balance of probabilities that Miss Mano would have received [PRIVATE] results at this stage, that was sent to her on 31 July 2021.

The panel also had regard to Miss Mano’s evidence contained in her local ‘Witness Interview Statement’ dated 19 August 2021. It noted that Miss Mano had stated that the emails *‘come up on the phone and I can swipe them across I don’t believe this deletes them though...If this oversight has occurred I am deeply sadden (sic) and can only apologise’*.

The panel noted that Miss Mano did not believe she could have deleted the email accidentally by swiping the message.

The panel considered its previous findings that Miss Mano had a duty to report positive COVID-19 tests and had not informed or taken action in respect of [PRIVATE]’s positive test result. Therefore, having found on the balance of probabilities that Miss Mano had deleted the notification email referenced at charge 1 the panel went on to consider the explanation provided by Miss Mano in her local investigation statement that there was no intention to delete and that this was accidental and not dishonest. However, the panel had regard to the other evidence before it and considered that this explanation was very unlikely in the specific circumstances of this incident and having regard to the

facts already found proved. In applying the test for dishonesty being the standards of ordinary decent people the panel was satisfied that Miss Mano's conduct in deleting the email notification would be regarded as dishonest by those standards. It therefore found charge 3 proved.

Charge 4

'Between June 2022 and 16 September 2022 failed to disclose your DBS barring decision to your employer and carried out work that you were barred to do.'

This charge is found proved.

In considering this charge the panel had regard to the DBS Final Decision letter dated 28 June 2022, the NMC witness statement of Colleague B, and the NMC witness statement of Ms 1.

The panel first considered whether there was a duty on Miss Mano to disclose the DBS Barring decision to her employer. It had regard to the DBS Final Decision letter dated 28 June 2022 which states:

'We...decided it is appropriate and proportionate to include you in the Children's and the Adults' Barred Lists...'

'It is an offence to carry out or seek work from which you are barred [...] If you are currently in regulated activity you should talk to your employer as soon as possible.'

The panel was satisfied from the DBS letter that there was a duty for Miss Mano to inform her employer as soon as possible, as she was employed in a regulated activity.

In considering whether Miss Mano failed to disclose the DBS barring decision, the panel had regard to the Colleague B's NMC statement which states:

'Ms Mano was an employee of the Agency, working from August 2021 under a zero hour contract working predominantly in a consultancy and leadership role (I cannot recall the exact date when Ms Mano's (sic) started working for the Agency). Their last working day at the Agency was 16 September 2022 when I became aware that they had a DBS barring decision. Prior to 16 September 2022 I was not informed about the DBS barring decision by anyone and there were no restrictions placed on Ms Mano's registration with the NMC upon recruitment. I was informed of the DBS barring decision in a conversation between me and NMC about another matter relating to allegations about Ms Mano's practice on 16 September 2022. The DBS barring decision was apparently made in June 2022 and my understanding is that there was no indication about practice restrictions until October 2022.'

The panel noted that Miss Mano was sent the final decision of her barring on 28 June 2022 and had failed to notify her employer of this decision by 16 September 2022. It took into account that the final decision letter from the DBS stated that it had given Miss Mano *'an opportunity to explain why [she] should not be included in the Children's Barred List and the Adults' Barred list'*, and to which it *'did not receive a response'*. The panel was therefore of the view that Miss Mano had been contacted previously by the DBS and had had an opportunity to challenge its decision, which she did not do. The panel was therefore satisfied that Miss Mano would have been aware of the final decision to bar her.

The panel considered the possibility of Miss Mano not having received the final decision from the DBS. In doing so, it had regard to Ms 1's NMC statement in which she confirmed that Miss Mano's address as recorded in the NMC register was the address to which the DBS had been sent. The panel was therefore satisfied on the balance of probabilities, that Miss Mano did receive the final decision letter from the DBS, and failed to inform her employer that she had been barred from working with children and adults. Accordingly, the panel found charge 4 proved.

Charge 5

'Your conduct at charge 4 was dishonest as you knew you had been barred by DBS and were seeking to conceal this from your employer.'

This charge is found proved.

In considering this charge, the panel had regard to a telephone attendance note dated 16 September 2022, and an email from Miss Mano to the NMC dated 9 September 2021.

The panel had regard to the telephone attendance between an NMC Screening Officer and Colleague B dated 16 September 2022 which states:

'spoke to [Colleague B] following her email, updated her with regard to ethe (sic) DBS barring – confirmed that this was a true reflection from her linked case, she said she spoke to the reg who denied having any knowledge of the DBS decision and of the linked case within our [NMC] investigations team...'

The panel also had regard to an email from Miss Mano to the NMC dated 9 September 2021, in response to an NMC investigation against her which states:

'Firstly can I say I am devastated by this email as I have dedicated my self (sic) to being a nurse since 2007...'

The panel noted that Miss Mano had responded to the NMC email concerning the initial NMC investigation, and further that this acknowledgment of the NMC's investigation into her practice pre-dated Colleague B's telephone conversation with the NMC Screening Officer confirming that Miss Mano had denied having knowledge of the NMC investigation. The panel was therefore of the view that Miss Mano had sought to conceal that she had knowledge of the NMC investigation, and was satisfied on the

balance of probabilities that she had also sought to conceal the DBS barring decision from her employer.

The panel also took into account its earlier finding that Miss Mano failed to disclose her DBS barring decision to her employer and carried out work that she was barred to do.

The panel was satisfied that dishonesty was automatically implied where there had been an attempt to conceal information that ought to have been disclosed. It determined that Miss Mano's actions in seeking to conceal that she had been barred by the DBS would be regarded as dishonest by the standards of ordinary decent people. The panel therefore found charge 5 proved.

Charge 6

'In January 2022 were asked by Colleague B if you were subject to any NMC fitness to practise investigations and stated that you were not.'

This charge is found proved.

In considering this charge the panel had regard to Colleague B's NMC witness statement and oral evidence.

The panel first had regard to Colleague B's witness statement, which states:

'Ms Mano's NMC PIN required revalidation in January 2022. I checked the NMC register again in January 2022 and saw there were no restrictions on Ms Mano's PIN. I also recall that I asked Ms Mano in January 2022 whether they were subject to any NMC fitness to practise investigations as part of the revalidation process. I expected Ms Mano to answer these questions honestly and Ms Mano informed me that they were not subject to any fitness to practice investigations. Based on Ms Mano's answer, there was no cause for me to carry out an investigation or further questioning at that time. I cannot recall the exact date I asked Ms Mano these questions.'

The panel also heard oral evidence from Colleague B that Miss Mano had approached her to be her confirmer for revalidation purposes. Colleague B stated in her oral evidence that, as part of the revalidation process, Colleague B had asked Miss Mano whether she was the subject of any ongoing NMC Fitness to Practise investigations and that Miss Mano had stated she did not. The panel accepted the evidence of Colleague B noting that this was a question that would ordinarily be asked during the revalidation process, and that Colleague B's oral evidence was consistent with her written evidence.

The panel was therefore satisfied that in January 2022 Miss Mano was asked by Colleague B if she was subject to any NMC fitness to practise investigations and that Miss Mano stated she was not. Accordingly, the panel found this charge proved.

Charge 7

‘Your conduct at charge 6 was dishonest in that you knew you were subject to an NMC fitness to practise investigation.’

This charge is found proved.

In considering this charge the panel had regard to an email from Miss Mano to an NMC Screening Officer dated 9 September 2021, in which Miss Mano was responding to questions concerning her nursing practise and stated:

‘Firstly can I say I am devastated by this email as I have dedicated my self (sic) to being a nurse since 2007...’

The panel noted that Miss Mano was responding to an NMC email. The panel was satisfied from Miss Mano's documented response sent on 9 September 2021, that she was aware that she was subject to NMC Fitness to Practise concerns as of January 2022 when she told Colleague B that she was not subject to any fitness to practise investigations. The panel noted that there had only been 4 months (from September 2021 to January 2022), and was of the view that it was unlikely Miss Mano would have

forgotten about the NMC investigation she was involved in due to the seriousness of such investigations.

The panel was satisfied that Miss Mano's actions in stating that she was not aware of any Fitness to Practise investigation when she was, would be regarded as dishonest by the standards of ordinary decent people. It therefore found charge 7 proved.

Charge 8

'Between April 2022 – June 2022 did not complete an application for a DBS despite being asked by Colleague B to do so.'

This charge is found proved.

In considering this charge the panel had regard to an email from Colleague B to the NMC dated 16 September 2022 and Colleague B's NMC witness statement and oral evidence.

The panel had regard to the email from Colleague B to the NMC dated 16 September 2022. In this email Colleague B was responding to the NMC question '*Please confirm whether you were aware of KM being barred on the DBS list*' and to which Colleague B responded:

'Not aware until today there were any concerns – Previous DBS and declarations in place for previous work and request to complete DBS with CQC in preparation for role as manager – we have requested proof of these applications on previous occasions which has not been provided and therefore Kelly was asked recently to undertake a new application.'

The panel also had regard to Colleague B's NMC witness statement, which states:

'11. In April 2022 we were planning to place Ms Mano in a different role, which required Ms Mano to apply for a CQC DBS. We were exploring new roles as the work we offer is short/term project based, and as Ms Mano was a Registered Manager prior to starting work with us, we wanted to use their skill set as best we could, so we were exploring roles where Ms Mano could help others to develop leadership knowledge and skills. Unfortunately, this plan coincided with the timing for her [PRIVATE], so they took some time off work.

12. Between April to June 2022 I asked Ms Mano on several occasions to apply for a DBS check for their new role. In response Ms Mano indicated that they would make their application, and at (sic) they sent me screenshots to show that they were in the process of making the application. I made these requests verbally and via WhatsApp. I cannot recall the exact dates that I requested this from Miss Mano.

13. I am not aware if Ms Mano did send their DBS application off, and I did not receive any response from DBS or Ms Mano with the outcome of the DBS application.'

In oral evidence Colleague B stated that she asked Miss Mano more than two times for the completed DBS application and that a completed DBS was never provided by Miss Mano.

The panel found Colleague B to be a credible witness having found her oral evidence supported the evidence set out in the NMC witness statement, and contemporaneous documentary evidence before the panel. It had no reason to doubt her testimony. It was therefore satisfied on the balance of probabilities that between April 2022 and June 2022, Miss Mano did not complete a DBS application despite being asked by Colleague B to do so. The panel therefore found charge 8 proved.

Charge 9

‘Your conduct at charge 8 lacked integrity as you were seeking to delay your DBS status coming to light.’

This charge is found proved.

In considering this charge, the panel considered Miss Mano’s behaviour in failing to adhere to the ethical standards of the nursing profession. It had regard to the preamble of Section 20 of ‘The Code: Professional standards of practice and behaviour for nurses and midwives (2015)’ (the Code) which states:

‘Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the professions from patients, people receiving care, other health and care professionals and the public.’

The panel had regard to its finding that Miss Mano was aware of her DBS barred status by date 28 June 2021 at the latest. It also took into consideration the evidence of Colleague B, that she had asked Miss Mano to complete a DBS check for a new role the Agency was seeking to employ her in, and that Miss Mano had provided a screen shot of her having started the application, but never providing the outcome despite being asked for this on more than two occasions by Colleague B.

Colleague B gave evidence to the panel that she was not worried about the delay from Miss Mano due to her personal circumstances concerning [PRIVATE], and also due to Colleague B’s own understanding that sometimes there could be considerable delay in getting DBS results. The panel was of the view that Colleague B trusted that Miss Mano was obtaining the DBS as requested and was relying upon the inherent trust placed in nurses.

The panel took into account its previous finding, that Miss Mano was aware of her barred status with the DBS by 28 June 2022 at the latest. It was satisfied that Miss

Mano knew that if she processed the new DBS application, her barred status would have been found out by her employer. The panel therefore determined that Miss Mano had lacked integrity by seeking to delay her DBS status coming to light. Accordingly, the panel found charge 9 proved.

Charge 10

‘On 16 September 2022 told Colleague B that you were not aware of NMC investigations and being barred by DBS.’

This charge is found proved.

In considering this charge the panel had regard to an email dated 16 September 2022 from Miss Mano to the NMC, the telephone attendance note between the NMC Screening Officer and Colleague B, and Colleague B’s NMC witness statement and oral evidence.

In considering the email from Colleague B dated 16 September 2022 to the NMC the panel noted that, in response to a question posed by the NMC Screening Officer *‘Please confirm whether you were aware of KM being barred on the DBS list’*, Colleague B had responded *‘Not aware until today there were any concerns- Previous DBS and declarations in place for previous work and request to complete DBS with CQC in preparation for role as manager – we have requested proof of these applications on previous occasions which has not been provided and therefore Kelly was asked recently to undertake a new application.’*

The panel also had regard Colleague B’s NMC’s Witness Statement which states:

‘15. On 16 September 2022, I had a telephone call with the NMC Screening Officer to discuss their email in more detail. Towards the end of the call, the Screening Officer realised Ms Mano had received DBS barring order on 28 June 2022, restricting them from working with adults and children. The Screening

Officer asked me whether I knew about this, and I confirmed that I had not been informed about this decision.

16. On the same day, I asked Ms Mano to meet me in my office. During the meeting I told Ms Mano that I had been informed by the NMC that there are ongoing investigations into their fitness to practise, and that they had received a barring order from DBS. I asked Ms Mano whether they knew about this, and Ms Mano told me they did not know about any of these things...'

The panel also had regard to Colleague B's oral evidence where she stated that Miss Mano had not disclosed her barred DBS status to her. The panel found this to be consistent with Colleague B's witness statement, and further supported by Colleague B's email to the NMC on 16 September 2022. It therefore accepted the evidence of Colleague B.

The panel was satisfied from the evidence before it that Colleague B was not aware of Miss Mano's DBS status before the NMC had informed her. It therefore found charge 10 proved on the balance of probabilities.

Charge 11

Your conduct at charge 10 was dishonest in that you were aware of an NMC investigation and your barred status for DBS.

This charge is found proved.

Having determined that Miss Mano was aware of both an NMC investigation and her barred status by the DBS, and had informed her colleague that she was not aware, the panel had regard to the evidence before it in relation to this charge. The panel took into account whether there was any alternative explanation to Miss Mano being dishonest in relation to not telling Colleague B that she was aware of both the NMC investigation and the DBS decision. The panel reminded itself that the question of what is honest or dishonest in a particular set of circumstances, is to be determined by applying what it

understands the standards of ordinary, decent people to be. Having applied this standard the panel was satisfied that Miss Mano's actions would be regarded as dishonest by the standards of ordinary decent people. Accordingly, it found this charge 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 Miss Mano's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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, Miss Mano's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Lodge, on behalf of the NMC invited the panel to consider the professional duty of candour, and the duty for nurses to be honest, open, truthful, to never allow their personal interest to outweigh their duties, and to always act with integrity.

Mr Lodge referred the panel to the NMC guidance on '*Making decision on dishonesty charges and the professional duty of candour DMA-8*'. He submitted that there had been clear breaches and serious professional misconduct in this case. This was a serious time for vulnerable patients and that Miss Mano had put at risk the public's trust and confidence in all nurses by her actions. He further submitted that there was a period of sustained dishonesty over more than a year, and that Miss Mano had displayed a dangerous attitude to the safety of people under her care. He submitted that the panel should consider whether Miss Mano's actions constituted neglect towards vulnerable adults and invited the panel to take the view that the facts found proved did amount to misconduct.

With regard to impairment, Mr Lodge submitted that Miss Mano's actions had put people in her care at an unwarranted risk of harm as [PRIVATE] had tested positive and should have been told to isolate. He further submitted that there is a potential future risk of harm to the public as Miss Mano had not apologised, accepted the allegations, cooperated, or attempted to remediate her conduct.

With regard to the public interest, Mr Lodge submitted that the panel's function was to uphold proper professional standards and maintain public confidence in the profession.

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, *Wingate v SRA* [2018] EWCA Civ 366, *PSA v GMC & Uppal* [2015] EWHC 1304 Admin, *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) (*Grant*).

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 Miss Mano's actions did fall significantly short of the standards expected of a registered nurse, and that her actions and omissions amounted to a breach of the Code. Specifically:

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.4 make sure that any treatment, assistance or care for which you are responsible is delivered without undue delay

2 Listen to people and respond to their preferences and concerns

To achieve this, you must:

2.1 work in partnership with people to make sure you deliver care effectively

8 Work cooperatively

To achieve this, you must:

8.3 keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff

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

8.6 share information to identify and reduce risk

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.1 complete all records at the time or as soon as possible after an event, recording if the notes are written some time after the event

10.2 identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need

Preserve safety

You make sure that patient and public safety is not affected. You work within the limits of your competence, exercising your professional ‘duty of candour’ and raising concerns immediately whenever you come across situations that put patients or public safety at risk. You take necessary action to deal with any concerns where appropriate.

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

To achieve this, you must:

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

16.4 acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

17.3 have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people

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

To achieve this, you must:

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

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals and the public.

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 keep to and uphold the standards and values set out in the Code

20.2 act with honesty and integrity at all times, treating people fairly and without discrimination, bullying or harassment

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

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

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations. It also includes cooperating with requests to act as a witness in any hearing that forms part of an investigation, even after you have left the register.

To achieve this, you must:

23.3 tell any employers you work for if you have had your practice restricted or had any other conditions imposed on you by us or any other relevant body.

23.4 tell us and your employers at the first reasonable opportunity if you are or have been disciplined by any regulatory or licensing organisation, including those who operate outside of the professional health and care environment

24 Respond to any complaints made against you professionally

To achieve this, you must:

24.2 use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice

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

To achieve this, you must:

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel considered the charges found proved and made the following findings:

Charges 1 and 2:

With regard to charges 1 and 2, the panel took into account the fact that Miss Mano had failed to notify [PRIVATE] that he had tested positive for COVID-19. It took into account that this had taken place during a global pandemic, when risk of infection to vulnerable elderly residents was at its highest and in many cases life threatening. Miss Mano would have been aware of the need to follow local and national prevention control policies and procedures and failed to do so. Further, Miss Mano then went on to delete the positive

COVID-19 test result for [PRIVATE] in an attempt to cover up her failure. The panel considered this was behaviour which fell far below the standards expected of a registered nurse and amounted to misconduct.

Charge 3:

In considering misconduct in respect of charge 3, the panel had regard to the NMC guidance entailed '*Serious concerns which are more difficult to put right*' (FTP-3A). It was of the view that Miss Mano's dishonest act in deleting [PRIVATE]'s positive notification was a serious concern which was more difficult to put right. Miss Mano had breached the professional duty of candour to be open and honest when things go wrong, and had attempted to cover up her actions. Miss Mano was the Home Manager and directly responsible for the notification of positive COVID-19 test results. She was in a position of trust, and by deleting the email notification she exposed residents, colleagues and wider members of the public to harm. The panel found this breach of duty of candour very serious. It determined that her dishonest conduct was behaviour which fell far below the standards expected of a registered nurse and did amount to misconduct.

Charge 4:

The panel found that failing to disclose a barring decision by the DBS was a serious falling short of the standards expected of a registered nurse. It took into account that the DBS is a UK regulatory organisation set up to protect children and adults. By failing to disclose the DBS barring decision, Miss Mano put her employer and the residents in her care at an unwarranted risk of harm as, given the DBS decision, she should not have been working in a regulated activity. The panel determined that this was behaviour which fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charge 5:

The panel determined that Miss Mano's dishonest act in failing to disclose her DBS barred status with her employer was a serious concern which is more difficult to put right. Miss Mano was aware that she could not work with children and adults and

continued to do so, putting her employer at risk by concealing this information. The panel had regard to the NMC guidance FTP-3a and was satisfied that Miss Mano had provided a false picture of her employment by not informing her employer that her right to engage in a regulated activity with children and adults had been suspended, and further that she was practising in breach of that suspension.

Miss Mano, as a result of her deliberate failure to disclose, was directly responsible for exposing residents receiving care, to harm and neglect. She placed her own priorities before her professional duty to ensure the safety and dignity of people receiving care. The panel was satisfied that this was behaviour which fell significantly short of the behaviour expected of a registered nurse and amounted to misconduct.

Charges 6 and 7:

The panel was the view that Miss Mano dishonestly stating to Colleague B that she was not subject to any NMC fitness to practise investigation, when she knew she was, put the people in Miss Mano's care at risk of harm by not allowing Colleague B to make a pertinent and relevant risk assessment based on this information.

Having had regard to the evidence before it, and in considering the NMC Guidance FTP-3a, the panel was satisfied that Miss Mano had provided a false picture of her employment history by hiding incidents which she was being investigated for and was responsible for exposing people receiving care to harm by putting her own priorities before her professional duty to ensure their safety. The panel was satisfied that these were serious concerns that are difficult to put right. It determined that Miss Mano's actions in respect of charges 6 and 7 was behaviour which fell far below the behaviour expected of a registered nurse and amounted to misconduct.

Charge 8 and 9:

In considering whether charges 8 and 9 amounted to misconduct, the panel took into consideration the purpose for Miss Mano having been asked to complete the application; namely because Colleague B was seeking to place Miss Mano in a more senior role. Colleague B required a DBS application to be completed to undertake an

adequate risk assessment in placing Miss Mano in the role of Registered Manager. The panel again took into account that the DBS is a UK regulatory organisation set up to protect children and adults. The panel was of the view that by purposely failing to complete the DBS application, Miss Mano put her employer and residents at a potential risk of harm, as she should not have been working in a regulated activity. Ms Mano further demonstrated a lack of integrity by seeking to conceal her DBS barred status as she knew she should not have been working in a regulated activity. Miss Mano once again put her own priorities before the safety and well-being of the residents in her care and her employer. The panel determined that this was behaviour which fell seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Charges 10 and 11:

The panel was of the view that Miss Mano had put her employer and residents under her care at risk by dishonestly telling Colleague B that she was not aware of the NMC investigations and being barred by the DBS, when she was. Miss Mano knew that she was subject to an NMC investigation and had been barred from working with children and adults from June 2022. The panel was of the view that this evidenced a sustained period of dishonest behaviour up until 16 September 2022 when she was confronted. The panel determined that this was behaviour which fell 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, Miss Mano's fitness to practise is currently impaired.

In coming to its decision, the panel had regard to the Fitness to Practise Library (DMA-1), updated on 27 February 2024, 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 *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 determined that limbs a, b, c and d of the “test” were engaged.

With regard to limb a, the panel found that by not telling [PRIVATE] that he had tested positive for COVID-19, and attempting to conceal the results of her barred DBS status and the ongoing NMC fitness to practise investigation, Miss Mano had put residents at an unwarranted risk of harm. With regard to limb b, the panel was satisfied that Miss Mano had breached fundamental tenets of the nursing profession; namely to ‘*Preserve safety*’ and to ‘*Promote professionalism and trust*’. With regard to limb c, the panel was satisfied that the breach of these fundamental tenets had brought the reputation of the nursing profession into disrepute. With regard to limb d, the panel was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty and integrity extremely serious.

In considering whether Miss Mano had demonstrated any insight into her misconduct or any strengthening of practice, the panel acknowledged that she had not attended the hearing, would not know the outcome of its decision on facts, and had regard to Miss Mano’s local ‘Witness Interview Statement’ in which she did not accept the essence of the allegations. Nonetheless, the panel noted that there had been no meaningful engagement by Miss Mano with the NMC. Miss Mano had not provided a reflective piece, character references, or evidence of any steps she had taken to address the concerns. The panel therefore had no evidence of insight or strengthening of practice before it to consider. It was of the view that its multiple findings of dishonesty (and one in relation to a lack of integrity) relating to Miss Mano’s attempts to conceal information relating to a positive COVID-19 test result, her DBS barred status and NMC fitness to

practise investigation, was evidence of a deep-seated attitudinal issue. The panel deemed that this was behaviour that would be difficult to remediate.

The panel also took into account the fact that the misconduct identified was not an isolated incident, but dishonesty that was sustained over a period of time which was directly related to her professional practice.

In light of there being no evidence of insight or strengthening of practice, the panel determined that there was a high risk of the misconduct being repeated. It therefore found that a finding of impairment is necessary on the ground 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.

The panel took into account that Miss Mano's misconduct took place during a global pandemic whilst she was caring for vulnerable patients in a large nursing home. Miss Mano was the Home Manager with responsibility for the Home, and had taken on the responsibility notifying positive individuals within the Home of positive COVID-19 tests in a timely manner. Miss Mano failed to disclose a positive test result for [PRIVATE] and later deleted the evidence of that notification. Miss Mano also sought to conceal that she had been barred from working with children and adults, that she was subject to ongoing NMC fitness to practice investigations, and failed to complete a DBS application requested by her employer. Miss Mano acted dishonestly on four separate occasions and also was found to have acted with a lack of integrity. The panel was of the view that members of the public, fully informed of the circumstances of this case, would be alarmed by Miss Mano's actions, and determined that a finding of impairment on public interest grounds was also required.

Having regard to all of the above, the panel was satisfied that Miss Mano has not demonstrated that she is able to practise kindly, safely or professionally. It therefore determined that Miss Mano's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike Miss Mano off the register. The effect of this order is that the NMC register will show that Miss Mano has been struck-off the register.

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

Submissions on sanction

Mr Lodge referred the panel to the NMC guidance SAN-3e and submitted that Miss Mano's actions are fundamentally incompatible with her being a registered professional and that a strike off order was the appropriate order in this case. He submitted that the proven lack of integrity allegation and four proven allegations of dishonesty raised fundamental questions about Miss Mano's professionalism. He further submitted that a strike off order was necessary to maintain public confidence in the profession and to protect patients.

Decision and reasons on sanction

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

careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Miss Mano's regulatory finding by the DBS
- Miss Mano was in a position of responsibility and trust as the Home Manager with overall responsibility of the Home
- Miss Mano demonstrated a sustained pattern of dishonesty over a period of time
- Miss Mano's conduct placed residents at risk of suffering harm
- Miss Mano has demonstrated deep-seated attitudinal issues by attempting to conceal her misconduct
- Miss Mano has demonstrated a lack of insight into her failings.

In considering whether there were any mitigating features, the panel took account of Miss Mano's reported personal stresses reported in the local 'Witness Investigation Statement', namely [PRIVATE]. The panel acknowledged Miss Mano's personal circumstances. However, the panel was of the view that Miss Mano's misconduct was as a result of deep-seated attitudinal issues and was satisfied that there were no mitigating features in relation to this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the public protection issues identified and the seriousness of the 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 public protection issues identified and the seriousness of the case, an order that does not restrict Miss Mano's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Mano's misconduct was not at the lower end of the spectrum, in light of its

dishonesty and lack of integrity findings, and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Mano's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given that Miss Mano has been barred from working in a regulated activity by the DBS. Further, given the dishonesty and lack of integrity found, the panel was of the view that these were deep-seated attitudinal issues which could not be addressed by a conditions of practice order in any event. The panel also determined that the placing of conditions on Miss Mano's registration would not protect the public or adequately address the seriousness of this case.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a suspension order may be appropriate where some of the following factors are apparent:

- *'A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- *...'*

The panel found that there was no evidence of the above factors being present in this case. It noted that there were multiple instances of Miss Mano attempting to conceal important information (namely a positive COVID-19 test result, her DBS status and the NMC investigation. Miss Mano displayed signs of a harmful deep-seated attitudinal problem, which the panel found evident by its four findings of dishonesty and a further finding that Miss Mano displayed a lack of integrity. Miss Mano had repeated the dishonest behaviour. The dishonesty in relation to the concealment of her DBS barred

status was sustained for over 4 months, and Miss Mano attempted to conceal this status for a further period by failing to complete the DBS application as requested by Colleague B. In light of there being no evidence of insight or remediation, the panel was satisfied that there was a significant risk of the misconduct found being repeated.

The panel found that Miss Mano's conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. It found that the serious breach of fundamental tenets of the profession evidenced by Miss Mano's actions is fundamentally incompatible with her remaining on the register.

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

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

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

The panel was satisfied that Miss Mano's actions did raise fundamental questions about her professionalism. The panel was in no doubt that the behaviours exhibited by Miss Mano were significant departures from the standards expected of a registered nurse. As the Home Manager of a care home caring for elderly patients during a global pandemic, Miss Mano failed to notify a colleague that they had tested positive for COVID-19 and later deleted evidence of that notification in an attempt to conceal her failure. Miss Mano also continued to practise as a nurse whilst knowingly being barred from carrying out any regulated activity. Miss Mano then dishonestly denied having previous knowledge of her barred status and an NMC investigation, when asked by her employer, and also displayed a lack of integrity in deliberately failing to complete a DBS application in the

hope that her employer would not find out that she had been barred from working in a regulated activity. Miss Mano consistently put her own priorities before the residents in her care and placed members of the public at an unwarranted risk of harm.

Miss Mano also breached the professional duty of candour on multiple occasions by failing to:

- *'Be honest, open and truthful in all their dealings with patients and the public.*
- *Act with integrity...*
- *Act without delay and raise concerns if they experience problems that prevent them from working within the Code... Also act without delay and raise concerns if they or a colleague, or any other problems in the care environment, are putting patients at risk of harm. 'Doing nothing' and failing to report concerns is unacceptable.*
- *...'Near misses', where a nurse's, midwife's or nursing associate's act or omission puts a patient at risk of harm, must also be escalated as a point of concern.'*

The panel was of the view that the findings in this particular case demonstrate that Miss Mano's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the effect of Miss Mano's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct themselves, the panel has concluded that nothing short of this would be sufficient in this case.

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

This will be confirmed to Miss Mano in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Miss Mano's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Lodge. He submitted that an interim order is necessary and proportionate on both public protection and public interest grounds, based on the panel's findings.

He requested that the order run for a period of 6 months to accommodate any appeal.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed

an interim suspension order for a period of 18 months due to the amount of time it may take for any appeal to conclude.

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

That concludes this determination.