

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

**Substantive Hearing**

**Monday 29 July 2024 – Thursday 1 August 2024**

Virtual Hearing

**Name of Registrant:** **Oladotun Adebayo**

**NMC PIN** 20C0805E

**Part(s) of the register:** RNMH: Mental health nurse, level 1 (30 November 2020)

**Relevant Location:** Tameside Metropolitan

**Type of case:** Misconduct and Conviction

**Panel members:** Philip Sayce (Chair, Registrant member)  
Karen Naya (Lay member)  
Vivienne Stimpson (Registrant member)

**Legal Assessor:** Alain Gogarty

**Hearings Coordinator:** Taymika Brandy

**Nursing and Midwifery Council:** Represented by Matthew Kewley, Case Presenter

**Mr Adebayo:** Present and represented by Shekyena Marcelle-Brown, Counsel, instructed by the Royal College of Nursing (RCN)

**Facts by admission proved:** All

**Facts not proved:** None

**Fitness to practise:** **Impaired**

**Sanction:** **Striking-off order**

**Interim order:**

**Suspension order (18 months)**

## Details of charge:

That you, a Registered Nurse,

1. On or about 9 June 2020 on an application form for employment at Pennine Care NHS Foundation Trust,
  - a) In setting out your last three year's employment failed to set out:
    - i) Your employment at Greater Manchester Mental Health NHS Foundation Trust when you knew you were required to
    - ii) The reason why you ceased employment at Greater Manchester Mental Health NHS Foundation Trust when you knew you were required to
  - b) When required to disclose whether you had ever been dismissed from previous employment, answered 'No' when you knew you had been dismissed from employment by Greater Manchester Mental Health NHS Foundation Trust
  - c) When required to disclose the role you were dismissed from, and the date and reason for dismissal, failed to disclose that information
2. Your representations one or more of 1 a) i)-ii), b) and/or c) above, were dishonest in that your representation and/or failures to disclose information were:
  - a) an attempt to conceal your employment with Greater Manchester Mental Health Trust when you knew you were required to declare it
  - b) an attempt to conceal that you had been dismissed from your employment by Greater Manchester Mental Health Trust and/or the existence of a related

NHS Counter Fraud Investigation when you knew you were required to declare one or both

- c) an attempt to obtain employment at Pennine Care NHS foundation Trust on a basis which you knew was false.
3. On or about 9 June 2020 on a declaration form for employment at Pennine Care NHS Foundation Trust:.
- a) Represented that you had not previously been subject to disciplinary proceedings when you knew you had been
  - b) Represented that you were not aware of any current NHS Counter Fraud investigation into yourself, when you were aware of such an investigation.
4. Your representation at 2 a) and or b) above were dishonest in that:
- a) You knew you were making a representation which was not true
  - b) Your representation was an attempt to obtain employment at Pennine Care NHS foundation Trust on a basis which you knew was false.
5. Having become aware on or about 1 December 2020 that you were charged with a criminal offence, failed to inform your employer until 28 January 2021
6. Your failure at 5. above was:
- a) Dishonest in that by not disclosing this you were continuing to represent that you had not been charged with a crime
  - b) A breach of your professional duty of candour

7. On 25 February 2021, in the course of an investigation interview, represented that you had not received your terms and conditions of employment until on or about 28 January 2021 when you had received and signed your Terms and Conditions of employment in November 2020.
  
8. Your representation at 7 above was dishonest in that:
  - a) You had received and signed your Terms and Conditions of employment in November 2020
  
  - b) You sought to exculpate yourself from your failure at charge 5 above, and/or your dishonesty and/or lack of candour at charge 6 above.
  
9. On 10 February 2021, at Greater Manchester Magistrates' Court, were convicted of one offence of dishonestly retaining a wrongful credit contrary to 24A(1) and (6) of the Theft Act 1968

And, in light of the above, your fitness to practise is impaired by reason of your misconduct in respect of charges 1-8, and your conviction in respect of charge 9.

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

During the course of Ms Marcelle-Brown's submissions on sanction, on your behalf, she made an application that parts of the case be held in private due to [PRIVATE]. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Kewley, on behalf of the Nursing and Midwifery Council ('NMC') raised no objection to this application.

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

Having heard there will be reference made to [PRIVATE], the panel determined to go into private session, as and when such issues are raised in order to protect their right to privacy.

## **Background**

You entered onto the NMC register on 30 November 2020 following qualification as a Mental Health Nurse at the University of Salford on 20 September 2020. Prior to qualifying as a Registered Mental Health Nurse, you had been employed as a bank Care Assistant at the Greater Manchester Mental Health NHS Foundation Trust ('the Greater Manchester Trust') between approximately November 2013 and July 2018.

In August 2018, the Greater Manchester Trust became concerned that you were being paid for shifts that you had not completed. This matter was referred to NHS Counter Fraud Authority ('NCHA') and an investigation commenced. The Greater Manchester Trust also

conducted its own disciplinary investigation and you were subsequently dismissed. You appealed this decision in October 2019, and the decision was upheld.

On 17 April 2019 you attended an interview with NCHA. You engaged with the interview and admitted that you had received payment for shifts that you had not worked.

In the summer of 2020, you submitted an application for a Mental Health Staff Nurse vacancy at Pennine Care NHS Foundation Trust ('Pennine Trust'). At the material time, you were already employed as a bank Health Care Support Worker at Pennine Trust. You had worked in this capacity at Pennine Trust since 2013.

On 9 June 2020 following a successful application, Witness 1, a Unit Manager employed by Pennine Trust interviewed you for the role. As part of the application form you were required to declare 'all periods of employment' for the previous three years. In this section of the application form, you did not mention your previous employment with the Greater Manchester Trust or the reason why that employment came to an end. On the application form you were also asked whether you had been previously dismissed from a role to which you answered 'no'.

In addition, on 9 June 2020, you signed a declaration form confirming that you had not previously been subject to any disciplinary proceedings and did not disclose NHS counter fraud investigation. You were successfully appointed and started working for Pennine Trust as a Mental Health Staff Nurse on 30 November 2020.

Upon your appointment, Pennine Trust reported that you had received these Terms and Conditions prior to this date, namely on 26 November 2020, which you had signed confirming that you had 'read and accepted the terms and conditions as set out above'. Paragraph 20 of the terms and conditions of employment provided that 'any charges

brought against you for a criminal offence whether connected with your employment or not must be reported immediately in writing to your line manager'.

Following an interview with NCFA, on 1 December 2020 you were charged and you received a summons on 5 December 2020 to appear in Court. You informed Witness 1 about the criminal charge via email on 28 January 2021. You were subsequently suspended by Pennine Trust pending local investigation and the matter was referred to the NMC on 2 February 2021. The referral raised concerns regarding your failure to declare knowledge of your criminal charge and the ongoing NCFA investigation within your application.

On 10 February 2021, at Greater Manchester Magistrates' Court, were convicted of one offence of dishonestly retaining a wrongful credit contrary to 24A(1) and (6) of the Theft Act 1968. The particulars were that 'between 04/04/2016 and 26/07/2018 at Manchester, knowing or believing that a wrongful credit of £9732.33p had been made to an account kept by you or in respect of which you had an interest, dishonestly failed to take such steps as were reasonable to secure that the credit was cancelled'. The sum of £9,732.33 reflected a total of 64 shifts that you had received payment for despite not working these shifts.

On 25 February 2021, you were interviewed by Witness 2, Clinical Services Manager at Pennine Trust. You informed Witness 2 that you were charged on 1 December 2020, but you were not aware that you had to notify Pennine until you received your Terms and Conditions of employment on 28 January 2021.

On 30 March 2021 you were sentenced to eight weeks' imprisonment, suspended for 12 months. The memorandum recorded that the reason for the custodial sentence was a breach of trust against the NHS over a period of time.

Since the concerns arose you have continued to work as an agency nurse, without restriction. You have repaid the total sum of £9732.33 to the Greater Manchester Trust.



## **Decision and reasons on facts**

At the outset of the hearing, the panel heard from Ms Marcelle-Brown, who informed the panel that you make full admissions to the facts.

In accordance with Rule 24(5), the Chair announced the facts proved by way of your admissions.

## **Fitness to practise**

Having announced that all facts are found proved, the panel then moved on to consider, whether charges 1)-8) amount to misconduct and, if so, whether your fitness to practise is currently impaired by reason of your misconduct and/or your conviction (charge 9) . 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 charges 1)-8) amount to misconduct. If the panel finds that charges 1)-8) amount to misconduct, the panel must also decide whether your fitness to practise is currently impaired as a result of that misconduct. It must also decide whether, in all the circumstances, your fitness to practise is currently impaired by way of your conviction.

## Oral evidence

Prior to hearing submissions on the issue of misconduct and impairment, the panel also heard oral evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Unit Manager at Pennine Trust, at the time of the allegations.
- Witness 2: Clinical Services Manager for Low Secure Services at Pennine Trust, at the time of the allegations.

## 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.*’

Mr Kewley invited the panel to take the view that the facts found proved are sufficiently serious to amount to misconduct and were in breach of The Code: Professional standards of practice and behaviour for nurses and midwives (2018) (“the Code”). He then directed the panel to specific paragraphs and standards and identified where, in the NMC’s view your actions amounted to a breach of those standards.

Mr Kewley submitted that as a highly qualified practitioner with experience of working within the NHS since 2013, you were aware of your duty to be open and transparent, in respect of completing your application form. He submitted that at the time, you knew that you had been dismissed from the Greater Manchester Trust. You had also admitted during your interview with NCFA to receiving money that you were not entitled to prior to completing your application form. He submitted that your dishonest conduct continued

after you had been successfully appointed as Mental Health Staff Nurse at Pennine Trust, as once you were aware of your criminal charge, you failed to notify your employer immediately. He submitted that during the local investigation you sought to mislead Pennine Trust by reporting to have not received the Terms and Conditions of your employment until after your criminal charge, claiming that you were unaware that you needed to disclose such information.

Mr Kewley submitted that the misconduct in this case relates to your deliberate concealment of information to obtain your role at Pennine trust. Further, he submitted that you attempted to circumvent the safeguards put in place by Pennine Trust to ensure that suitability of applicants and protection of patients. He submitted that your dishonesty was sustained until you made your employer aware on 28 January 2021.

Mr Kewley submitted that your conduct at charges 1)-8) was serious and fell well below the standards expected of a registered nurse. For these reasons, he submitted that the charges do amount to misconduct.

In respect of current impairment, Mr Kewley submitted that limbs b-d of Dame Janet Smith's "test" are engaged in this case by your past actions. He submitted that your misconduct was motivated by self-gain and that the nature of the misconduct and your conviction is capable of bringing the nursing profession into disrepute.

Mr Kewley referred to the NMC Guidance titled 'Serious concerns which are more difficult to put right' (Reference: FTP-3a, last updated 27/02/2024) and 'Can the concern be addressed?' (Reference: FTP-14a , last updated 27/02/2024) in support of his submissions, referring the panel to the sections of the guidance that are engaged in this case. He submitted that your dishonesty was not isolated in nature and that it was directly linked to your practice, albeit your conviction relates to your pre-registration period.

Mr Kewley submitted that whilst the panel must not draw any adverse inference from your decision to not give evidence, it is limited in testing the depth and understanding of your

insight demonstrated in your reflective piece. He acknowledged that you have shown some insight and that you made full admission to the charges at the outset of the hearing. He further submitted that your reflective piece does recognise some of the impact your conduct has had. He invited the panel to consider the personal circumstances outlined and whether you have provided sufficient explanation for your dishonest behaviour.

In respect of public protection, Mr Kewley submitted that there are no clinical concerns in this case that could pose a direct risk to patients. He invited the panel to consider the positive evidence it had heard regarding your knowledge and clinical skills. He submitted that potential public protection issues arise from your attempt to circumvent the safeguards put in place for employee suitability by providing false information on your application form.

Mr Kewley submitted that a finding of current impairment on public interest grounds is necessary due to your sustained dishonest behaviour in charges 1)-8) and your conviction relating to dishonesty. He submitted that the concerns in this case are sufficiently serious and capable of undermining public confidence in the profession if a finding of current impairment were not made. He invited the panel to find that your fitness to practise is currently impaired by way of your conviction and misconduct.

Ms Marcelle-Brown submitted that she had no positive submission to make and misconduct is a matter for the panel. She also invited the panel to disregard the policy document within the bundle titled 'Conduct and Disciplinary Policy' as it appears that the policy was not in force at the material time.

Ms Marcelle-Brown invited the panel consider the following factors; your full admissions to the charges at the outset of the hearing, your repayment of £9732.33 to the Greater Manchester Trust and your completion of your suspended sentence.

In respect of charges 7) and 8), she invited the panel to consider the context in which this concern arose. Including, that you had not properly reviewed the Terms and Conditions of

employment until January 2021 when you received a hard copy of this document, the lack of update regarding the criminal investigation at the time you had initially received the electronic copy of your Terms and Conditions of Employment in November 2020 and your unfamiliarity with the criminal justice system. She also invited the panel to consider the relevant context set out in your reflection in relation to your family life at the material time.

Ms Marcelle-Brown submitted that you fully accept your wrongdoing and have expressed remorse and apologised for your failings. She submitted that you have not sought to blame others for your failings.

In relation to your insight, Ms Marcelle-Brown submitted that whilst you have chosen not to give evidence, you have provided a detailed reflection demonstrating sufficient insight. She submitted that in this reflection you address what you should have been done and what you would do differently in the future. She invited the panel to consider the NMC Guidance titled 'Insight and strengthened practice' (Reference: FTP-14, last updated 14/04/2021), referring the panel to the relevant parts of the guidance. She submitted that you have fully engaged with these NMC proceedings and the criminal investigation. Further, you pled guilty at the first opportunity.

In relation to strengthened practice, Ms Marcelle-Brown submitted that you have continued to work without issue with two different employers since the concerns arose. She submitted that you have been honest and transparent with your employers about your past demonstrating your integrity and adherence to a duty of candour. She submitted that you have also undertaken relevant training on communication and a duty of candour. Taking into account your reflection and evidence of strengthened practice, she submitted that you have fully remediated the concerns. She invited the panel to consider that you had worked for the NHS previously for seven years without concern and your period of unrestricted practice since the concerns arose. She submitted that you are an otherwise good and valued member of the profession.

In relation to your conviction, Ms Marcelle-Brown reminded the panel that the Court took the view that a suspended sentence was the appropriate sanction as your conviction was not so serious to warrant immediate custody.

Ms Marcelle-Brown invited the panel to consider the evidence it had heard from Witnesses 1 and 2, which was complimentary of you and your clinical skills. She also referred the panel to your positive references from your current employers.

Referring to the NMC Guidance titled 'Is it highly unlikely that the conduct will be repeated?' (Reference: FTP-14c, last updated 14/04/2021), she submitted that there is no risk of repetition as you have done everything to remediate the concerns. She submitted that it is not disputed that the factors Dame Janet Smith's "test" are engaged in this case by your past actions. However, she submitted that in light of your sufficient insight and evidence of remediation your fitness to practise is not currently impaired. She submitted there are no public protection concerns in this case. Further, that a reasonable and fully informed member of the public would not be concerned if a finding of current impairment were not made given the factors set out above.

Referring to the case of *PSA v GMC and Uppal* [2015] EWHC 1304 (Admin), she reminded the panel that not every act of dishonesty will automatically result in a finding of current impairment.

The panel accepted the advice of the legal assessor which included reference to the relevant cases of: *Cheatle v GMC* [2009] EWHC 645 (Admin), *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v GMC* [2004] EWHC 2317 (Admin), *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin), *Cohen v GMC* [2008] EWHC 581 (Admin), *PSA v GMC and Uppal* [2015] EWHC 1304 (Admin) and *Meadows v GMC* [2006] EWCA Civ 1390.

## **Decision and reasons on misconduct**

When determining whether charges 1)-8) found proved by way of your admission amount to misconduct, the panel had regard to the terms of the Code.

The panel, in reaching its decision, had regard to the protection of the public and the wider public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel was of the view that your actions amounted to a breach of the Code.

Specifically:

### ***'20 Uphold the reputation of your profession at all times***

*To achieve this, you must:*

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

*20.2 act with honesty and integrity at all times [...]*

*[...]*

*20.4 keep to the laws of the country in which you are practising*

*[...]*

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

*To achieve this, you must:*

*[...]*

*21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care*

*[...]*

### ***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:*

*[...]*

*23.2 tell both us and any employers as soon as you can about any caution or charge against you, or if you have received a conditional discharge in relation to, or have been found guilty of, a criminal offence (other than a protected caution or conviction)*

*[...]*

*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'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel went on to consider whether your actions in charges 1)-8) were sufficiently serious to amount to misconduct.

Whilst the panel acknowledged that you were a newly qualified nurse when you started working at Pennine Care Trust, it noted that you had previously worked at the Greater Manchester NHS Trust from 2013. It therefore found that you were well experienced in working in the NHS and that you would have been aware of your duty to be open and honest. The panel was of the view that you had made a deliberate attempt to conceal information regarding your employment at Greater Manchester Trust to mislead Pennine Trust as you were aware that this may have affected your appointment to your new role. The panel considered that your dishonesty was an attempt to circumvent the safeguards put in the place by Pennine Trust to ensure the appointment of appropriate employees.

Regarding your failure to inform your employer that you were charged with a criminal offence once you had become aware of it, the panel found that you had not kept Pennine Trust fully apprised of the developments in your case. The panel did not accept that you had not properly reviewed the Terms and Conditions of your employment. The panel was of the view that as a Registered Nurse, you are committed to upholding the standard sets out in the Code, which include your professional obligation to disclose any conviction



immediately. The panel did not consider this to be an isolated action, and it was of the view that your dishonesty was sustained over a period of time to obtain employment. The panel found that you allowed your own personal interests to outweigh your duty to be honest, open and truthful.

The panel considered that patients, fellow practitioners, and members of the public expect nurses to act with honesty and integrity at all times and that your dishonest conduct is serious and constitutes misconduct.

The panel concluded that your actions fell far below such standards expected of a Registered Nurse, and that members of the public and fellow professionals would consider your behaviour deplorable. The panel, therefore, determined that your actions at charges 1)-8) breached the Code and were sufficiently serious to amount to misconduct.

## Decision and reasons on impairment

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

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

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

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

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

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

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

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

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

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

- a) [...]
- 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 b, c and d of Dame Janet Smith's test as set out in the Fifth Report from Shipman were engaged by your past actions. The panel was of the view that your conviction regarding your period of employment at Greater Manchester Trust and your subsequent dishonest behaviour to obtain employment at Pennine Care Trust brought the profession into disrepute. The panel considered that honesty and integrity, as well as the need to uphold the reputation of the profession, are fundamental tenets. It determined that your dishonest course of conduct, sustained over a period of time, breached fundamental tenets of the nursing profession and brought the nursing profession into disrepute. The panel did not find that limb a) is engaged, noting that this case did not give rise to any patient protection matters where your actions put patients at risk of harm.

The panel are aware that this is a forward-looking exercise, and accordingly it went on to consider whether your misconduct was remediable and whether it had been remediated.

Having regard to the case of *Cohen*, the panel noted that the concerns in this case relate to dishonesty which it considered are difficult to remediate.

The panel then went on to consider any evidence of insight and remediation.

Regarding insight, the panel noted that you made full admissions to the charges at the outset of the hearing and that you had also pleaded guilty to the offence you were convicted of. Further, the panel had regard to your reflective piece, noting that you have apologised for your actions, expressed remorse and demonstrated some awareness of the implications of your actions. Notwithstanding this, the panel considered that your reflection did not fully explore what you would do differently in the future and the impact of your actions on colleagues and the reputation of the profession. The panel also noted that you have since been open and transparent with your current employers regarding your conviction and past disciplinary proceedings. In addition, it acknowledged that you have attended the hearing and engaged with the NMC's proceedings. For these reasons the panel found that your insight is developing at this time.

In assessing what steps you have taken to strengthen your practice, the panel bore in mind that patients were not put at risk of harm as a result of your actions. The panel acknowledged that you continued to practice unrestricted since the referral, without concern. The panel also noted the references provided attesting to your current nursing practice and the evidence of completed training, some which is relevant to concerns, namely, a duty of candour and communication.

Regarding your misconduct at charges 1)-8), the panel found that you had taken some steps to remediate the concerns. However, it also had regard to the serious and sustained nature of your dishonesty and your attempt conceal information to circumvent safeguarding procedures at Pennine Trust required for respective employees. The panel

also noted that your dishonest behaviour was directly linked to your attempt to obtain employment as a Registered Nurse. The panel bore in mind its earlier findings that your insight is not yet fully developed. For these reasons, the panel found that you have not yet sufficiently addressed the concerns in this case.

Regarding your conviction, the panel acknowledged that you are no longer subject to a suspended sentence and that you had paid back the money in full to the Greater Manchester Trust. The panel was of the view that your actions were serious and that a reasonable and fully informed member of the public would be concerned that your behaviour raises questions about your professionalism. Further, that despite obtaining payment for 64 shifts you had not worked, over a prolonged period, you had failed to raise this with your employer until you were investigated.

The panel first considered whether a finding of impairment is required on the grounds of public protection. Whilst the panel found that you had put your interest before your duty to be honest and open, it concluded that your conviction and the misconduct identified was not linked to your patient care and did not put patients at risk of harm. For these reasons, the panel determined that a finding of current impairment on public protection grounds is not required.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health, safety and wellbeing of the public and patients, and to uphold and protect the wider public interest, which includes promoting and maintaining public confidence in the nursing profession and upholding the proper professional standards for members of the profession.

The panel considered that patients, fellow practitioners and members of the public expect nurses to act with honesty at all times. The panel considered that confidence in the nursing profession and in the NMC as a regulator would be undermined if a finding of impairment were not made in the circumstances. The panel therefore determined that a finding of impairment is necessary solely on public interest grounds.

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

## **Sanction**

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register. The effect of this order is that the NMC register will show that you have 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 Kewley informed the panel that in the Notice of Hearing, dated 27 June 2024 the NMC had advised you that it would seek the imposition of a striking-off order, if the panel found your fitness to practise currently impaired. He submitted that a striking-off order remains the appropriate and proportionate sanction in this case. He then outlined what he submitted were the aggravating features in this case for the panel to consider. He submitted that your dishonesty was multifaceted in that it took many forms and involved the concealment of information that continued after you were offered the job. Further, he submitted that that our dishonesty continued even after you had received your Summons in December 2020 when you denied having received the terms and conditions until January 2021, despite having received them in November 2020. This demonstrated your dishonesty extended until February 2021.

Referring to the SG, Mr Kewley invited the panel to consider the principle of proportionality, in that it must find a fair balance between your rights and the overarching

objectives of the NMC. He also stated that any sanction imposed must be appropriate and proportionate in order to uphold the public interest.

Mr Kewley then referred the panel to the NMC Guidance titled 'Considering sanctions for serious cases' (Reference: SAN-2 last updated: 27/02/2024). He submitted that the following factors are engaged in this case:

*'[...] the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*

- *[...]*
- *personal financial gain from a breach of trust*
- *[....]*
- *[...] systematic or longstanding deception'*

Mr Kewley submitted that the dishonesty in this case is at the higher end of the spectrum of impaired fitness to practise and seriousness.

In addressing the available sanctions in ascending order, Mr Kewley submitted that taking no further action or imposing a caution order would not address the public interest issues identified in this case.

Regarding a conditions of practice order, Mr Kewley reminded the panel that any conditions imposed must be relevant, proportionate, measurable and workable. He submitted that the misconduct in this case does not relate to clinical concerns and given the seriousness of your dishonesty there are no workable conditions that could be formulated to address the concerns regarding your attitude, honesty and professionalism. For these reasons, he submitted that a conditions of practice order would not be appropriate or sufficient to maintain public confidence in the profession.

Mr Kewley then addressed the panel in respect of a suspension order. He submitted that looking at the totality of your dishonesty and conviction, such an order would not sufficiently address your sustained and longstanding dishonesty. He submitted that even following your dismissal from the Greater Manchester Trust, your course of dishonest conduct continued, in an attempt to gain and retain employment at Pennine Trust. He submitted that you placed your own career and financial interests above the interests of the wider profession. He submitted that your actions call into question and raise fundamental concerns about your professionalism.

For the reasons above, Mr Kewley invited the panel to impose a striking-off order.

Ms Marcelle-Brown acknowledged that whilst the concerns in this case are serious, she submitted that it is not impossible for the concerns in this case to be addressed. She submitted that you have sufficiently addressed the misconduct in this case through your demonstrated insight and evidence of remediation. She then outlined the mitigating features in this case.

Ms Marcelle-Brown reminded the panel that the purpose of imposing any sanction is not to punish a registrant and invited the panel to consider your period of unrestricted practice since the concerns arose.

Referring to the SG, Ms Marcelle-Brown addressed the panel in respect of a caution order. She submitted that there are no clinical concerns, or any risk of harm to patients identified. She submitted that therefore, the panel may find that this sanction is appropriate and proportionate in light of the circumstances of this case. She submitted that a caution order would mark that your behaviour was unacceptable and must not happen again. She referred to the panel's decision on impairment which noted your developing insight, period of unrestricted practice since the concerns arose and your positive references.

With regard to a conditions of practice order, Ms Marcelle-Brown submitted that if the panel was of the view that a caution order was not the appropriate or proportionate



sanction, she would invite the panel to impose a condition of practice order. She submitted that it is possible to formulate relevant, proportionate, measurable and workable conditions. She submitted that you have demonstrated your ability to be open and honest on two occasions with your current employers, as they are fully apprised of your conviction and previous disciplinary matters. She submitted that you are keen to demonstrate that you have learnt from your mistake and willing to do whatever you can to rectify that. She submitted that you have continued to engage with these proceedings and that there are no factors that would make a conditions of practice order inappropriate such as evidence of harmful, deep seated personality or attitudinal problems. Further, she submitted that there are identifiable areas of training such as communication and a duty of candour that a conditions of practice can address. She submitted that whilst working under a conditions of practice order, you can continue to develop your insight.

Ms Marcelle-Brown submitted there is evidence before the panel to support that you have shown a willingness to complete relevant training and to remain engaged with your employer to ensure that you are supported and to mitigate the risk of repetition. She then outlined possible conditions for the panel to consider.

Ms Marcelle-Brown submitted that you have a supportive employer whom you have been open and honest with regarding these ongoing NMC proceedings. Referring to an email dated 31 July 2024, from your RCN representative, Ms Marcelle-Brown explained that this email indicates that your current line manager may be supportive of any conditions and that they are currently exploring the possibility of you becoming a permanent member of staff.

Ms Marcelle-Brown outlined your personal circumstances, [PRIVATE].

In addressing a suspension order, Ms Marcelle-Brown submitted that although this case does involve dishonesty and a conviction, it does not automatically mean that it is necessary to impose a suspension order. She submitted that in order to uphold proper standards of the profession, your misconduct and conviction can be properly marked with

a less restrictive sanction. However, she submitted that if the panel were minded to impose a suspension order, she would invite it to consider the mitigating features, including your financial circumstances. Further, she submitted that a short period of suspension would mark the seriousness of these matters and allow you to continue working on your insight and remediation. She submitted that having regard to the SG, your misconduct was a single incident in the course of your nursing career and that there is no evidence of harmful deep-seated personality or attitudinal problems, or repetition of behaviour since the incident.

Ms Marcelle-Brown submitted that imposing a striking-off order would be wholly disproportionate in the circumstance of this case and in light of the mitigation that reduces the seriousness of your misconduct. She submitted that your actions are not fundamentally incompatible with you remaining on the register. She submitted that whilst your misconduct did raise questions about your professionalism, you have addressed these concerns. She submitted that public confidence can be maintained without you being removed from the register.

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

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

The panel considered the following to be aggravating feature in this case:

- The multifaceted nature of your dishonesty.

The panel considered the following to be mitigating features in this case:

- You have apologised for your actions and shown remorse. In addition, the panel identified your developing insight and that you made full admissions to the charges at the outset of the hearing;
- No evidence of repetition of similar behaviour or any other concerns since these incidents; and
- You have provided positive testimonials.

Prior to considering the sanctions in ascending order, the panel had regard to the NMC's guidance on considering sanctions for serious cases in assessing the dishonesty in this case. It noted that the most serious forms of dishonesty, which are most likely to question whether a nurse should be allowed to remain on the register, often involve:

- *deliberately breaching the professional duty of candour by covering up when things have gone wrong, [...]*
- [...]
- *personal financial gain from a breach of trust*
- [...]
- [...] *longstanding deception*

*The panel noted that dishonesty will be generally considered less serious in cases of:*

- *one-off incidents*
- *opportunistic or spontaneous conduct*
- *no direct personal gain*
- *no risk to patients*
- *incidents in private life of nurse, midwife or nursing associate'*

Having regard to this case, the panel considered that your initial dishonest conduct which resulted in your conviction, took place over a period of two years. This resulted in your financial gain of £9732.33 for shifts you had not worked. The panel noted that you received a custodial sentence for this conviction, albeit suspended. Further, it noted that

your dishonesty continued over a period of time to obtain and retain your role at Pennine Trust. All of your dishonesty related to your professional life.

Balancing these factors as a whole, the panel considered that the dishonesty in this case was at the upper end of the spectrum of seriousness.

The panel then went onto consider what action, if any, to take in this case.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the misconduct. The panel decided that taking no action would not satisfy the wider public interest.

The panel next considered 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, however the Fitness to Practise Committee wants to mark that the behaviour was unacceptable and must not happen again.”*

The panel considered that your misconduct was not at the lower end of the spectrum of impaired fitness to practise, in light of your conviction and a dishonest course of conduct which involved a number of instances of dishonest behaviour over a period of time. The panel considered that a caution order would fail to place any restrictions on your practice. The panel therefore found that a caution order would not address the seriousness of this misconduct, and the public interest, in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel was mindful that any conditions imposed must be appropriate, proportionate, measurable and workable.

The panel had regard to the fact that the misconduct in this case did not involve concerns about your clinical practice. However, it involved a number of instances of dishonest behaviour over a period of time. The panel did not consider that it was possible to identify workable, measurable and practicable conditions of practice to address this type of behaviour. Furthermore, the panel considered that a conditions of practice order would not mark the seriousness of your misconduct, or address the wider public interest in maintaining confidence in the nursing profession and in the NMC as a regulator.

The panel went on to consider whether to impose a suspension order. The panel had regard to the SG, which states that a suspension order may be appropriate where 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, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour*

The panel considered that your actions were not a single instance of misconduct. The panel considered there was some evidence of attitudinal problems in this case, noting your continued and sustained dishonesty. The panel noted that you had provided a number of positive references from your current employers, commenting on your honesty and openness. The panel also acknowledged that there was no evidence to suggest you had repeated the behaviour since the incidents arose, having continued practising as a Registered Nurse without restriction. However, the panel noted that following your conviction for dishonesty, you failed to understand the importance of honesty and integrity. It noted that your dishonesty continued in your attempt to mislead and conceal information from Pennine Trust prior to and following your appointment to your new role.

The panel reminded itself of its findings at the impairment stage. Whilst you had made early admissions to all of the charges, the panel was not satisfied that you had developed

full insight into your misconduct. It was not provided with any explanation as to why the misconduct occurred nor did you demonstrate a sufficient understanding of what you would do differently.

Taking all of this into account, given the serious level of dishonesty in this case, the panel did not consider that a period of suspension would be sufficient to maintain public confidence in nurses and uphold professional standards.

The panel went on to consider whether to impose a striking-off order. The panel had regard to the SG which states that:

*This sanction is likely to be appropriate when what the nurse, midwife or nursing associate has done is fundamentally incompatible with being a registered professional. Before imposing this sanction, key considerations the panel will take into account include:*

- *Do the regulatory concerns about the nurse, midwife or nursing associate raise fundamental questions about their professionalism?*
- *Can public confidence in nurses, midwives and nursing associates be maintained if the nurse, midwife or nursing associate 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 considered that your dishonesty was sustained over a period of time and was directly linked to your attempt to obtain and retain employment as a Registered Nurse. The panel found that you allowed your own personal interests to outweigh your duty to be honest, open and truthful. The panel reminded itself that honesty and integrity are fundamental tenets of the nursing profession, and it considered that your behaviour did raise fundamental questions about your professionalism and breached these fundamental tenets. Given the seriousness of your dishonest behaviour, the panel concluded that this

was fundamentally incompatible with being a registered professional. The panel determined that public confidence in nurses would not be maintained unless you were permanently removed from the register. It considered that a striking-off order is the only sanction sufficient to maintain public confidence in the profession.

The panel noted the hardship such an order will inevitably cause you, however this is outweighed by the public interest in this case.

The panel further weighed the public interest of maintaining an otherwise competent nurse on the register and marking the public interest that would be engaged when considering the particular dishonesty in this case. The panel determined that the seriousness of your dishonesty must be marked by a striking-off order.

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

### **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 your own interest until the striking-off order takes effect.

### **Submissions on interim order**

Mr Kewley submitted that an interim suspension order is otherwise in the public interest. He relied on the panel's earlier findings to support that submission. He therefore invited

the panel to impose an interim suspension order for a period of 18 months to cover the 28-day appeal period and for any potential appeal to be lodged and considered.

Ms Marcelle-Brown submitted it is a matter for the panel as to whether an interim order should be imposed. She submitted that, although a finding of impairment has now been made, you had always accepted the facts in this case and continued to practice without restriction. She invited the panel to consider whether an interim order on public interest grounds is necessary in the circumstances of this case.

The panel accepted the advice of the legal assessor which included reference to the case of *Shiekh v General Dental Council* [2007] EWHC 2972 (Admin).

### **Decision and reasons on interim order**

Having regard to the findings in this case, the panel did consider that an interim order is otherwise in the public interest. Having regard to the seriousness of the misconduct in this case and the reasoning for its decision to impose a striking-off order, the panel considered that to not impose an interim order would be inconsistent with its previous findings.

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

The panel therefore imposed an interim suspension order for a period of 18 months to cover the 28-day appeal period. If no appeal is made, then the interim suspension order will be replaced by the striking off order 28 days after you are sent the decision of this hearing in writing.

That concludes this determination.

This will be confirmed to you in writing.