

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

**Substantive Hearing
Monday 11 November 2024 – Tuesday 19 November 2024**

Virtual Hearing

Name of Registrant:	Sarah Louise Smith
NMC PIN	15C1005E
Part(s) of the register:	Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (8 September 2016)
Relevant Location:	Cumbria
Type of case:	Misconduct
Panel members:	Judith Webb (Chair, lay member) Sharon Aldridge-Bent (Registrant member) Philippa Hardwick (Lay member)
Legal Assessor:	Richard Tyson
Hearings Coordinator:	Rose Hernon-Lynch
Nursing and Midwifery Council:	Represented by Omar Soliman, Case Presenter
Ms Smith	Present and represented by Karl Shadenbury, instructed by Unison
Facts proved by admission:	Charges 1, 2 and 3, and Charge 4 in relation to lack of integrity
Facts proved:	Charge 4 dishonesty, in its entirety in relation to Charge 2; and Charge 4(a) (b) and (c) in relation to Charge 3
Facts not proved:	Charge 4(d) in relation to Charge 3 and dishonesty
Fitness to practise:	Impaired on public interest grounds only
Sanction:	Suspension order (6 months with no review)

Interim order:

No order

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

At the outset of the hearing, Mr Soliman, on behalf of the Nursing and Midwifery Council (NMC), made a request that this case be held in private in part on the basis that [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 Shadenbury, on your behalf, indicated that he supported the application.

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

The panel determined to go into private session as and when such issues are raised in order to [PRIVATE].

Details of charge

That you, a Registered Nurse:

- 1) On 17 October 2020, accessed Patient A's medical records without clinical justification
- 2) On 13 February 2021 and/or 26 February 2021 asked Colleague B to:
 - a) Write down the log in details for the Symphony system on a piece of paper
 - b) Attach the piece of paper to a computer desk
 - c) Take a photograph of the piece of paper attached to the computer desk
 - d) Send a copy of the photograph to you
 - e) Immediately take the piece of paper down

- 3) On one or more occasions between 1 November 2020 and 28 February 2021 asked Colleague C to:
- a) Write down the log in details for the Symphony system on a piece of paper;
 - b) Attach the piece of paper to a computer desk
 - c) Take a photograph of the piece of paper attached to the computer desk
 - d) Send a copy of the photograph to you
 - e) Immediately take the piece of paper down
- 4) Your actions as specified in charges 2 and/or 3 were dishonest and/or lacking in integrity in that:
- a) You were asking one or more colleagues to improperly obtain and/or fabricate evidence
 - b) You knew it was wrong to ask your colleagues to act in this way
 - c) You were attempting to obtain a positive outcome in your disciplinary appeal
 - d) You were seeking to “get one over on [Colleague A]”

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

Background

On 10 February 2021, the NMC received a referral from the Deputy Chief Nurse at the West Cumberland (the Hospital) which is in the North Cumbria Integrated Care NHS Foundation Trust (the Trust). You began working at the hospital in October 2016 and at the time of the initial incident, you were working as a Band 5 registered nurse in the Accident and Emergency Unit ('A&E').

On 23 October 2020, the Hospital received a phone call from Patient A's mother, who was concerned that Patient A's medical record had been accessed by a member of staff in the A&E department. Patient A's mother said that Patient A was in a relationship with the ex-partner of one of your colleagues (Colleague A), who was

employed as a Health Care Assistant (HCA) in the A&E department. Both Patient A and her mother were concerned that Colleague A knew information which would only have been available through accessing Patient A's medical records.

Following an internal enquiry, it was found that:

- Patient A's medical records on the Trust's Symphony computer system had been accessed through a specific computer terminal on the A&E Unit on 17 October 2020 at 03:23. There would have been no legitimate reason for anyone to have accessed Patient A's record at that time as Patient A had not received any treatment at the Hospital since 2019.
- The Hospital Closed-Circuit Television ('CCTV') system identified that you and Colleague A had been using the relevant computer terminal at the time Patient A's records were accessed.

On 18 November 2020 at a meeting, as part of the internal investigation, you informed the Hospital that you and Colleague A (amongst others) had been talking about Patient A, and you believed you had treated Patient A in the past. In order to refresh your memory, you said, you accessed Patient A's record. You accepted that it had been wrong to do so.

The following day, 19 November 2020, you were suspended from your employment. At a later meeting on 8 December 2020, which took place in order to inform the internal investigation report and in which your union representative was present with you, you accepted you had looked at Patient A's record but said: *"I didn't look at personal information, but looked to see if I'd looked after her"*.

At a subsequent meeting on 11 December 2020, which took place in order to inform the internal investigation and in which your union representative was again present, you demonstrated on a computer the steps you had taken on the Trust's Symphony system when you accessed Patient A's record and showed the information that was visible to you on 17 October 2020.

When you clicked on Patient A's name, the following information was visible with regards to Patient A:

- Name
- D.O.B
- GP details
- Mother's details
- Address
- Employed role in the hospital
- Medical history ([PRIVATE])

On 26 January 2021, following the completion of the internal investigation and subsequent report, you were dismissed from your employment. You planned to appeal, although ultimately did not submit an appeal, against the decision to dismiss you. While you were preparing for your proposed appeal against your dismissal, you contacted Colleague B at the Hospital who you had previously confided in with regards to the investigation. You asked this colleague to:

- Write the generic Symphony log in details on a Post-It note
- Place the Post-It note on the desk next to a computer terminal
- Take a picture of the computer desk area with the note visible
- Remove the note as soon as the picture had been taken

Colleague B (an HCA) did not carry out your twice repeated requests and you also contacted Colleague C (also an HCA) making the same request. Colleague B later contacted a Senior Nurse and informed them of your requests. The view was taken that you had made these requests in order to falsify evidence in support of your appeal against dismissal.

Decision and reasons on facts

At the outset of the hearing, the panel heard from Mr Shadenbury who informed the panel that you made full admissions to Charges 1,2 and 3. Mr Shadenbury, subsequently, in his closing submissions, made an admission on your behalf to Charge 4 in relation to lack of integrity.

The panel therefore finds Charges 1,2,3 and Charge 4 in relation to lack of integrity proved in their entirety, by way of your admissions.

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

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 found 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:

- Witness 1: Matron of General Medicine and Elderly Care Ward and responsible for ensuring quality and safety within the Hospital.
- Witness 2: Matron of Emergency Care at the Hospital.
- Witness 3/Colleague B: HCA in the A&E department in the Hospital at the relevant time.

- Witness 4/ Colleague C: HCA in the A&E department in the Hospital at the relevant time.

The panel also heard evidence from you under affirmation.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor which included reference to the NMC guidance DMA-8 '*Making Decisions on Dishonesty Charges and the Professional Duty of Candour*' and to the relevant case law regarding dishonesty and lack of integrity. It considered the witness and documentary evidence provided by both the NMC and you.

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

Charge 4

“Your actions as specified in charges 2 and/or 3 were dishonest and/or lacking in integrity in that:

- a) You were asking one or more colleagues to improperly obtain and/or fabricate evidence
- b) You knew it was wrong to ask your colleagues to act in this way
- c) You were attempting to obtain a positive outcome in your disciplinary appeal
- d) You were seeking to “get one over on [Colleague A]”

This charge is found proved in its entirety in relation to lack of integrity by way of admission.

In relation to dishonesty, it is found proved in its entirety regarding Charge 2 and in Charge 4(a) (b) and (c) regarding Charge 3.

Charge 4(d) is found not proved in relation to dishonesty regarding Charge 3.

Charge 4(a)

In reaching this decision, the panel firstly considered Charge 4(a) and took into account your admission that you as a registered nurse had asked HCAs to obtain evidence in support of your proposed appeal in the ways set out in Charges 2 and 3. The panel noted that you specifically asked HCA members of your friendship group comprising a group of colleagues from the Hospital, despite the group also containing fellow registered nurses. The panel considered Colleague C's live evidence in which they highlighted their vulnerability at the time due to [PRIVATE]. The panel noted your decision to ask Colleague B to obtain evidence secretly as you were in a close friendship with this colleague. The panel noted that you asked your requests to be performed at night and in specific locations that would allow Colleagues B and C to be out of the view of others. The panel also deemed that your request that the evidence created then be discarded once a picture of it had been taken was evidence of fabrication of evidence. The panel also took into account that you made repeated requests to obtain evidence and that the request was made to more than one colleague, and so the panel found these actions to be improper. The panel also was of the opinion that Colleagues B and C were credible witnesses, and their live evidence was consistent with the statements they had given closer to the time of your actions.

The panel considered that your requests of Colleagues B and C were requests to fabricate evidence as you were attempting to create a situation in which evidence would be invented. The panel also considered the statements of Witnesses 1 and 2, and the live testimony of Colleagues B and C which further supported that you made these requests to fabricate evidence. The panel determined that you were attempting to have colleagues create evidence in order to support your proposed appeal against your dismissal. By your admission to Charges 2 and 3, you were admitting to creating evidence. The panel noted that you did not simply request that your colleagues take a picture of the area where you believed the Trust's Symphony password had at one time been present, but that you requested a scenario to be created by your colleagues. Your text message to Colleague C in which you asked:

'Did you mange [sic] to get that picture??' evidences that you chased your request for evidence to be created. Furthermore, the panel concluded that the specific steps that you texted to Colleague B:

'basically I need someone to write on a scrap bit of paper the log in for Symphony stick it on the desk and take a picture of it...and then obviously take it right back down but just need a picture like that'

were intended to fabricate evidence. The panel noted that you did not ask for a picture to be taken of something that was already in place and so this makes it clear that you fabricated evidence.

Therefore, the panel found, with regards to Charge 4(a) that you fabricated evidence.

Turning to 'improperly', the panel considered the expectations of registered nurses as set out in the NMC Code of Professional Conduct 2015 (The Code), and your knowledge and training that were evidenced in the Hospital's records of your Core Skills Framework and the Trust's Organisation Essential Learning, and your acknowledgement that you were up to date on your training and therefore would know that requests to Colleagues B and C were wrong. The panel found that you allowed your personal interests to outweigh the duties you knew applied to you in your role as a registered nurse. The panel noted that you approached a colleague who was also a friend, and not a senior nurse or manager, who if you were simply attempting to obtain evidence of a system in place in the ward, would be the best people to contact and ask for this evidence.

The panel found your actions to be in breach of part 20 of the Code: *'Uphold the reputation of your profession at all times'*, and specifically in breach of 20.2 which states:

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

For these reasons, the panel finds that your request to obtain evidence was improper as well as being a request to fabricate evidence.

Charge 4(b)

The panel considered that you are a registered nurse and should know the Code. You also had recently undertaken 'GDPR' training and stated in your evidence when explicitly asked: "*I know what I did was wrong*" in retrospect. You also reasserted this in cross examination. The panel found that there is an expectation that a registered nurse has knowledge of the Code, and therefore determined that you knew it was wrong to ask your colleagues to act in this way.

The panel took into consideration that you said you were not in a good place at the time of your actions and at that time, did not understand it was a wrong thing to do. However, the text messages you sent and phone calls you had imply that you knew it was wrong as you requested that the actions:

- Be conducted on the night shift
- Be done in a quiet place away from other staff members and/or CCTV
- Creation of a Post-It note with the Trust's Symphony generic password on it
- Take a photo of the Post-It note attached to the computer desk
- Send a copy of the photograph to you
- Take down the Post-It note as soon as the picture was taken

The panel inferred from this evidence that you knew it was wrong to ask Colleagues B and C to act in this way. The panel also noted that you were informed by Colleague B in a text message that '*I don't think it's a good idea*' thus making it clear to you that she thought it was wrong to act in this way at the time and yet, despite this, you made contact several times, and with more than one colleague, repeating your request. Colleague C also confirmed that you requested the action be carried out in either '*Majors or Resus*' areas. The panel were informed that '*Majors*' was a quiet area of the department at night, and there was no CCTV present in '*Resus*'.

The panel considered that your request was made to HCAs, who were junior to you, was made in a secretive manner, and that you requested that they act in a secretive way. You said you were told by your union representative to ask someone you trust. However, you did not make the requests to your fellow registrants or other senior members of the team, in an appropriate and open manner, adding to the panel's determination that you knew it was wrong. Colleague C, in live evidence, told the panel: "*I think she knew it was wrong*".

The panel noted that an HCA instinctively knew it could not be right, that there was secrecy involved, and your request was made and repeated over a period of time and therefore found Charge 4(b) proved.

Charge 4(c)

The panel considered your text message to Colleague B in which you wrote: '*I need something for my appeal which would be massively useful*'. The panel also took into account the statement of Colleague B in which she confirmed receipt of your text message regarding requiring information for your appeal.

The panel further noted your statement in your defence bundle that, in making the requests, you were acting on the suggestions of your union representative in the interests of your proposed appeal.

In all circumstances the panel found Charge 4 (c) proved

Charge 4(d)

The panel then went on to consider Charge 4(d). The panel took into account your text message sent on the evening of 13 February 2021 to Colleague B in which you wrote:

'I need something for my appeal which would be massively useful to get one over on [Colleague A]'.

This evidence was supported by the evidence of Colleague B in her written statement confirming receipt of your message and its content. The panel noted that in live evidence, you stated you were “*very angry*” with Colleague A and the position that they had placed you in which led to you both being dismissed from the Trust. You stated that the whole incident was “*because of [Colleague A]*”. The panel found that in your actions in respect of Charge 2 relating to Colleague B, you were seeking to ‘*get one over*’ on Colleague A. In relation to Charge 3, there was no evidence to suggest that you said that to Colleague C.

The panel therefore found Charge 4(d) proved in relation to Charge 2, but not proved in relation to Charge 3.

Dishonesty in relation to Charge 4

In considering the issue of dishonesty, the panel took into account your admissions as to your lack of integrity in relation to Charges 2 and 3, and it also noted the NMC’s Guidance on Making decisions on dishonesty charges and the professional duty of candour (DMA-8). When considering the subjective element of dishonesty, the panel did not consider that you had a genuine belief that what you were doing was permissible as your requests for secretive actions, as set out above, belied the assertion that you were acting on the advice of your trade union representative.

As to motivation, the panel considered that you did have a personal motive for your actions namely that you wanted to assist with your proposed appeal. The panel also considered that you acted out of a personal interest in trying to regain your employment with the Trust and also noted that your requests were made to junior colleagues.

The panel went on to consider whether there was an innocent explanation for your actions. The panel noted that, despite your assertion that you felt under pressure from your union representative, there was no other evidence before it which supports that you acted because of pressure you said you felt under. The panel also considered that there were other appropriate and open routes which were available to you which would not have involved secrecy or dishonesty in order to obtain what

the union representative had asked of you. The panel had already found that you knew it was wrong to ask your colleagues to act in this way, and therefore rejected your explanation that your actions and conduct were due to the requests from your union representative.

The panel took into account all of the evidence related to Charges 1, 2 and 3. The panel also took into consideration your previously good character, however, in light of all of its findings, determined that you have now lost this.

The panel also determined that, from an objective point of view, your conduct was dishonest by the standards of ordinary, decent people.

The panel therefore found your actions proved to be dishonest for Charge 4 in its entirety with regards to Charge 2 and proved for Charges 4(a) (b) and (c) in relation to Charge 3.

The panel found Charge 4(d) in relation to Charge 3 not proved for the reasons set out above.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

Mr Soliman invited the panel to take the view that the facts found proved amount to misconduct.

Mr Soliman referred to the panel's decision on facts and submitted that there has been cogent and credible evidence before the panel to demonstrate that the charges proven could amount to a finding of misconduct and impairment. He highlighted that in your reflective statement, you stated: *'I take full responsibility for accessing a patient's record [and]...will never do it again'*. Mr Soliman submitted that the charges found proved amount to a finding of misconduct.

Mr Shadenbury submitted that you have accepted that your conduct amounts to misconduct. Mr Shadenbury identified the following standards of The Code which you accepted you have breached, namely: 20.1, 20.2, 20.3 and 20.8.

Submissions on impairment

Mr Soliman moved on to the issue of impairment and referred 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.'

Mr Soliman submitted that, given the charges found proved, you cannot practise safely or professionally. Mr Soliman also referred to the judgment of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)*.

Mr Soliman submitted that there is an unwarranted risk of harm to people receiving care in the future by your accessing information and therefore compromising privacy. He noted that the information you obtained due to your accessing Patient A's file was used by another person to harass Patient A and that substantial harm was caused as your actions caused Patient A psychological harm and distress.

Mr Soliman did note that you have been practising safely for three years as evidenced by the reference you provided from your current employer which stated that there have been no concerns about your practice in this time. Your employer states:

'have always found her to be reliable, honest, professional, honest and respectful and kind. I have never found any suggestion that she has breached any confidence.'

Mr Soliman submitted that less weight should be placed on this testimonial as, when questioned by the panel, you stated that you worked directly with the person who provided the reference, that they were your line manager and they held the position of director of the company. Yet, curiously, the confirmer for your NMC revalidation was your neighbour as you told the panel you "*didn't have a manager*". Mr Soliman submitted that this directly contradicted your previous testimony. Mr Soliman also noted that the reference was undated and unsigned. He submitted that this cast doubt on the reliability of this evidence which is important in a case where lack of integrity and dishonesty have been proved.

Mr Soliman submitted the NMC accepts that your actions from which these proceedings arose were out of character and that you have shown some insight regarding regulatory concern 1, however, Mr Soliman submitted that your expressions of insight have been undermined by asking your colleagues to falsify evidence on your behalf and that this was an attempt to minimise your own responsibility. Mr Soliman further submitted that your attempts to shift blame, cover up your actions and falsify evidence show there is a risk that your conduct will be repeated and that you are a risk to the health, safety and wellbeing of the public.

Mr Soliman further submitted, regarding regulatory concerns 2, 3 and 4, that the NMC Guidance on Insight and Strengthened Practice (FTP-15) which sets out evidence of steps taken to demonstrate insight and regarding concerns, should be central to decisions regarding our current impairment. Mr Soliman submitted, on behalf of the NMC, that it is accepted that you have responded directly to the concerns and provided evidence of completion of further training as you have undertaken GDPR training and provided further reflections. Mr Soliman submitted that you have made attempts to reflect and remediate your practice as evidenced in your comprehensive reflective account, and there is evidence of your ongoing safe clinical practice. However, Mr Soliman submitted that you have never accepted dishonestly engaging with your colleagues to falsify evidence, and so Mr Soliman submitted that the panel should take restrictive actions.

Mr Soliman submitted that the panel should find you impaired on the grounds of public protection and public interest as you have breached 20.2 of The Code and have not upheld the reputation of the profession at all times, and you have breached the fundamental tenets of the nursing profession.

Mr Shadenbury submitted regarding impairment that:

*'The questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of **Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)**) are instructive...[and] all 4 limbs can be answered in the affirmative, albeit that you have acted in the past but is not liable to do so in the future.'*

Mr Shadenbury submitted with regards to public interest that:

'it is accepted that the Registrant's current fitness to practise is impaired on the basis that the Registrant's actions in the charges found proved are serious, and, if repeated, could cause both harm and damage the reputation of the profession and that of the regulator.'

However, Mr Shadenbury submitted that the panel should not find you impaired on the grounds of public protection as you have been practising safely for a period of almost four years.

When questioned by the panel with regards to what weight should be given to your employer's reference, Mr Shadenbury provided evidence of the original email from your employer containing the reference which is dated 6 November 2024. Mr Shadenbury also submitted that the reference provides the employer's 'PIN' and confirmation that they are a registered nurse.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

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

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

'5 Respect people's right to privacy and confidentiality

To achieve this you must:

5.1 *respect a person's right to privacy in all aspects of their care*

5.4 *share necessary information with other health and care professionals and agencies only when the interests of patient safety and public protection override the need for confidentiality'*

'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*

20.5 *treat people in a way that does not take advantage of their vulnerability or cause them upset or distress*

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

20.10 *use all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the right to privacy of others at all times.'*

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. The panel also noted your admission to misconduct.

The panel was of the view that given the facts found proved, there was a clear breach of the standards and values set out in the Code and that your conduct was not in line with the expected standards. The panel found you did not treat Colleagues B and C fairly as they felt that they were put under pressure by you to do something that they knew was wrong and, if acted on, could jeopardise their professional standing at work. The panel also noted the nature of your relationships with Colleagues B and C, who were more junior HCAs and concluded that you did not act as a role model.

The panel also found that you did not use communication responsibly due to the manner of your communications and the use of particular social media to ensure communications with these colleagues were secret.

The panel found that your actions, regarding Charge 1, caused severe distress to Patient A who was [PRIVATE] in the background when [PRIVATE] made the call to Witness 1 to inform them of their suspicions that Patient A's confidential medical records had been accessed without medical justification.

The panel further found, regarding Charges 2 and 3, that your actions caused distress to Colleagues B and C.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The panel found that all of the charges found proved were serious and would be regarded as deplorable by fellow practitioners.

Decision and reasons on impairment

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

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

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider

not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

The panel found that all limbs of the Grant test were engaged in the past, as you had admitted. At the time of these incidents, your misconduct put Patient A at risk and caused emotional harm not only to Patient A but also to Colleagues B and C. Your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. You had also acted dishonestly.

The panel is aware that this is a forward-looking exercise and accordingly, it went on to consider whether your misconduct was remediable and whether you had strengthened your nursing practice.

The panel also had regard to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), where the court addressed the issue of impairment with regard to the following three considerations:

- a. *'Is the conduct that led to the charge easily remediable?'*
- b. *'Has it in fact been remedied?'*
- c. *'Is it highly unlikely to be repeated?'*

The panel was of the view that your misconduct was generally capable of remediation. Regarding insight, the panel was of the view that you have shown developing insight as demonstrated in your original reflective piece in which you stated that:

'Over the last few years and reflecting on the events after the data breach, I have realised how much the patient was affected by the incident and how this has not only impacted the patient and my colleagues but the profession and myself.'

The panel also found you have shown further insight as evidenced in your second reflective piece in which you stated:

'I am now, after a period of reflection, very much aware this was not the right thing to do, and I shouldn't have approached my colleagues in the way I did. I am aware that they were made to feel uncomfortable following my approach. I shouldn't have expected them to do this as it was an unprofessional request.'

The panel determined that you have gained insight over the last few years, and that the breadth of your insight shows your understanding of the impact of both your

actions on others, and the reputation of the profession. The panel found this level of insight was repeated during your live evidence.

The panel also bore in mind the remorse you have demonstrated, particularly in your original reflective piece in which you state:

'I do now consider my actions to be wrong and I apologies [sic] for this and I will never repeat this conduct again...I am aware that accessing a patients record without clinical justification isn't acceptable. I accept full responsibility for my actions of accessing the information, regardless of other staff doing the same thing.'

The panel found that you continued to show remorse in your later reflective piece in which you write:

'I deeply regret getting my colleagues involved in this and I apologies [sic]. [PRIVATE], it was never my intention to cause a problem.'

The panel was also of the view that your written and live evidence demonstrated a considerable amount of remorse, specifically, regarding the effect of your actions on your colleagues and with regards to not being a role model to junior members of staff.

The panel also noted that, through the submissions made on your behalf by Mr Shadenbury, you now accept you acted dishonestly. The panel noted, in relation to dishonesty, his submissions were that:

'The panel has found proven that the Registrant has acted dishonestly, and whilst this was denied by the Registrant during her testimony to the panel, she nonetheless accepts the panel's decision. Honesty is of central importance to a nurse's practice, and as such, dishonesty will always be serious.'

It is submitted that, once the incident had been raised with the Registrant, she recognised that her actions had been wrong. During her examination in chief,

[Witness 1] opined that the Registrant had been very honest and forthcoming when she was interviewed about the incident.'

The panel also noted that you gained employment shortly after the incident and, as evidenced in the positive testimonial that you have provided, that your current employer is aware of the allegations and of their nature. The panel bore in mind that you have been practising unrestricted as a registered nurse in your current employment for nearly four years since the incident with no further concerns raised about your nursing practice.

The panel also noted that you have used reflections pertaining to these proceedings as part of your reflections for your recent NMC revalidation, therefore, showing you have undertaken additional reflection.

The panel took account of the independent research you have undertaken and completed. The panel also bore in mind that you have completed 'GDPR' training with a certified organisation in September 2024.

Consequently, the panel was of the view that you have made considerable progress in strengthening your nursing practice and that there is a low risk of repetition in this case. In light of this, this panel determined that you do not pose a risk of harm to the public and that a finding of impairment is not necessary on the ground of public protection. The panel was of the view that this was a single incident with multiple components and that none of the *Grant* test limbs apply in the future.

The panel bore in mind that 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 had regard to the serious nature of your failings and determined that public confidence in the profession, particularly as they involved dishonesty in a clinical setting, would be undermined if a finding of impairment were not made in this

case. For this reason, the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold the proper professional standards for members of the nursing profession.

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

Sanction

The panel has considered this case very carefully and has decided to make a suspension order for a period of six months without review. The effect of this order is that the NMC register will show that your registration has been suspended.

Submissions on sanction

Mr Soliman submitted that all charges, with the exception of one, have now been proved and that your fitness to practise has been found to be impaired, albeit solely on public interest grounds. Mr Soliman submitted that if this finding is not now recognised on the register, this position would be untenable and would cause concern to the public. Mr Soliman submitted that a striking-off order is therefore necessary on the grounds of wider public interest.

Mr Soliman submitted that these were the mitigating features:

- You have engaged with the NMC and this process
- You have shown insight and remorse
- You made early admissions to regulatory concerns 1,2 and 3
- You made a later admission with regards to regulatory concern 4
- Witnesses in the case have not experienced any previous issues with you

- You have made attempts to reflect and remediate as shown in your comprehensive reflective statement and training which included understanding GDPR
- You have provided overwhelmingly positive references
- [PRIVATE]

Mr Soliman submitted that these were the aggravating features:

- Your conduct involved an abuse of your position in accessing Patient A's record without clinical justification
- Your actions created a risk of psychological harm and distress to Patient A
- Your case has involved the aspect of dishonesty which you have never accepted

Mr Soliman further submitted that Patient A was exposed to serious psychological harm and distress, and that this matter is a serious concern demonstrated in the numerous breaches of The Code, specifically: 4.2, 5.1, 5.4, 20.2, 20.3, 20.5 and 20.8. Mr Soliman referred the panel to NMC Guidance on Serious concerns based on public confidence or professional standards (FTP-3c) and submitted that the Guidance is applicable in this case.

Mr Soliman submitted that there is a need to act, even if the nurse has shown that they have put serious clinical failings right, if the past incidents were so serious.

Mr Soliman submitted that a caution order would not sufficiently address the seriousness of the concern. He further submitted that, while a conditions of practice order could be applicable to regulatory concern 1, the charges related to regulatory concerns 2, 3 and 4, namely, falsifying evidence and the associative lack of integrity and dishonesty, are more difficult to put right.

Mr Soliman submitted that, having regards to NMC Guidance FTP-3c and SAN-3d *Suspension Order*, a Suspension order would not sufficiently address the seriousness of the concern. Mr Soliman submitted that the concern is so serious, it is

less easy for you to put right as you encouraged colleagues to falsify evidence, there was an emphasis on Colleagues B and C acting in secrecy and so this undermines your account of acting in good faith. Mr Soliman also submitted that you never accepted that your actions were dishonest, and this indicates that your insight into dishonesty is limited and so there remains a risk of repetition.

In conclusion, Mr Soliman invited the panel to impose a striking-off order as the necessary order in this case on the grounds of wider public interest.

The panel also bore in mind Mr Shadenbury's submissions that there are no universal or inflexible rules when determining a sanction and, rather, that the individual circumstances of the case must be a factor when determining the appropriate sanction.

Mr Shadenbury submitted that imposing a sanction is a:

'balancing act between the prospect of the individual registrant returning to practice and the reputation of the profession being disproportionately damaged if they were so permitted.'

Mr Shadenbury submitted that these were the aggravating features:

- *'Abuse of a position of trust*
- *Distress was caused to Patient A, and Colleague B and Colleague C*
- *Breach of patient confidentiality in respect of Patient A*
- *Her conduct in respect of Colleague B and Colleague C amounted to dishonesty and demonstrated a lack of integrity'*

Mr Shadenbury submitted that these were the mitigating features:

- *'No previous regulatory or disciplinary findings*
- *Her actions in respect of charge 1 is an isolated incident*
- *Some early admissions to the charges*
- *Demonstrated remorse for her actions*

- *Apologised to her colleagues within her reflective statement*
- *The panel found that the Registrant has made considerable progress in strengthening her nursing practice and that there is a low risk of repetition in this case*
- *Undertaken training and research into GDPR*
- *Positive character references from her line manager and colleagues*
- *Demonstrated a period of approximately 4 years without further incident'*

Mr Shadenbury submitted, with regards to the incidents of dishonesty and in which you lacked integrity, you were:

'[PRIVATE]'

Mr Shadenbury submitted that your denial of dishonesty was not an aggravating feature in this case as you did not deny the underlying facts, and the dispute was based on a disagreement between you and the panel over your subjective state of mind.

Mr Shadenbury submitted that, with regards to the imposition of a conditions of practice order, there are no practical or workable conditions in these circumstances, and that a suspension order may be appropriate.

Mr Shadenbury submitted that dishonesty in this matter should be treated as less serious as the panel has already found that it was a: '*single incident with multiple components*', and you did not personally gain from your dishonest conduct. Mr Shadenbury further submitted that there is no evidence that you have a deep-seated personality or attitudinal problem, and the panel had accepted that you have gained insight.

In conclusion, Mr Shadenbury invited the panel to impose a suspension order for a period of six months in order to mark both the seriousness of your actions and the importance of maintaining public confidence in the profession. Mr Shadenbury submitted that a striking-off order would neither be appropriate or proportionate:

'as the instances of misconduct are not fundamentally incompatible with the Registrant remaining on the NMC's register'

Mr Shadenbury submitted that the concerns about you do not raise fundamental questions about your professionalism.

Decision and reasons on sanction

Having found your fitness to practise currently impaired on public interest grounds alone, 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.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case.

The panel accepted the advice of the legal assessor.

The panel took into account the following aggravating features:

- Abuse of a position of trust in respect of Patient A and junior Colleagues B and C
- Lack of initial insight
- Distress was caused to Patient A and also to Colleagues B and C
- Your actions directly related to your work and work colleagues
- Breach of confidentiality in relation to Patient A
- You acted out of a personal interest in trying to regain your employment with the Trust
- Despite the panel finding it was a single episode, this did involve improper pressure being placed on junior colleagues on more than one occasion

The panel also took into account the following mitigating features:

- Insight albeit insight on dishonesty is just developing given acceptance of dishonesty at a late stage
- Actions in respect of Charge 1 were an isolated incident
- Early admissions to Charges 1,2 and 3 and lack of integrity in Charge 4
- Demonstrated remorse for her actions
- Apologised to her colleagues within her reflective statement
- You have made considerable progress in undertaking training and research into GDPR and strengthening your nursing practice
- There is a low risk of repetition of your actions
- Positive character references from your line manager and colleagues
- Reference from your manager demonstrates they have been informed and have good knowledge of your previous conduct
- Demonstrated a period of approximately 4 years without further incident
- Witnesses have stated that, outside these charges, they had not previously had any issues with you
- Full engagement with the local investigation and the NMC investigation and hearing

With regards to dishonesty the panel paid particular attention to NMC Guidance on *Considering Sanctions for Serious Cases (SAN-2)* and NMC Guidance on *How we determine seriousness (FTP-3)*. The panel considered that your actions were at the lower level of dishonesty and were made under pressure as an attempt to improve your proposed appeal outcome. The panel also noted that, through your representative, you admitted lacking integrity and now accept your dishonesty. The panel also noted that you did not challenge the material facts but challenged only the subjective interpretation of them.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the findings which include dishonesty.

The panel decided that it would not address public confidence in the profession and its regulators to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the nature of this case which involves dishonesty, an order that does not restrict your practise would not be appropriate in the circumstances and would not address public confidence in the profession and its regulators. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct, although at the lower end of dishonesty, had breached several elements of The Code and that a caution order would be inappropriate in view of the concerns found proved. The panel therefore decided that it would not be in the public interest to impose a caution order.

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

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The dishonesty identified in this case is not something that can be addressed through practice assessment or retraining. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case, and would not address the public interest in maintaining confidence in the profession and its regulators.

The panel next went on to consider whether a suspension order would be an appropriate sanction. The panel closely considered the guidance in NMC Guidance SAN-3d. 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.'* The panel found this as your action was born of panic when you had lost your job and friends
- *'no evidence of repetition of behaviour since the incident'* which the panel found evidenced in your recent employer reference
- *'the Committee is satisfied that the nurse, midwife or nursing associate has insight and there is a very low a significant risk of repeating behaviour'*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with you remaining on the register.

The panel was of the view that the risk of repetition of your actions, including dishonesty, is low given your insight, remorse and remediation, as well as your early admission of lacking integrity and your acceptance of dishonesty which goes to your insight. It also noted that you have worked as a registered nurse for the past 4 years without any further incident.

The panel went on to consider whether a striking-off order would be proportionate but, taking account of all the information before it, and of the mitigation provided, the panel concluded that it would be disproportionate. Whilst the panel acknowledges that a suspension may have a punitive effect, it would be unduly punitive in your case to impose a striking-off order. The panel considered the NMC Guidance on Striking-off order (SAN-3e) and:

'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 struck off 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 determined that none of these factors could be answered in the affirmative and, although there has been a finding of impairment, the panel's reasoning does not support a striking-off order.

Balancing all of these factors, the panel has concluded that a suspension order would be the appropriate and proportionate sanction.

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

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

In making this decision, the panel carefully considered the submissions of Mr Soliman in relation to the sanction that the NMC was seeking in this case. However, the panel found that none of the three factors in the guidance stated in SAN-3e are applicable in this case.

The panel determined that a suspension order for a period of 6 months without review was appropriate in this case to mark the seriousness of the misconduct, the dishonesty, accessing patient records, and the interests of the public.

Having found that your fitness to practise is currently impaired, the panel bore in mind that it determined there were no public protection concerns arising from its decision.

In accordance with Article 29 (8A) of the Order, the panel may exercise its discretionary power and determine that a review of the substantive order is not necessary. The panel determines it does not require a substantive order review to take place. The panel considers that the six-month suspension order will give you sufficient time to develop further insight in relation to dishonesty.

The panel determined that it made the substantive order having found your fitness to practise currently impaired in the public interest. The panel was satisfied that the substantive order will satisfy the public interest in this case and will maintain public confidence in the profession as well as the NMC as the regulator. Further, the substantive order will declare and uphold proper professional standards. Accordingly, this substantive order will expire, without review, at the end of its six-month period.

This will be confirmed to you in writing.

Interim order

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

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

Submissions on interim order

The panel took account of the submissions made by Mr Soliman who submitted that an interim suspension order is necessary due to the charges found proved and due to the fact that your fitness to practise is now impaired. Mr Soliman also submitted that an interim suspension order for a period of 18 months is in the public interest.

The panel also took into account the submissions of Mr Shadenbury who submitted that there is a high bar when making an interim order made on public interest grounds only, and that this high bar has not been reached in this case.

Decision and reasons on interim order

The panel was satisfied that an interim order was neither necessary for the protection of the public nor in the wider public interest, nor, indeed, in your own interest. Accordingly, it determined not to make an interim order in this case.

The panel noted that it had only found impairment on public interest grounds and that you have been working for a period of nearly four years with your current employer without incident. The panel also noted that there was no interim order in place prior to this hearing and, for the reasons given above, it considered that the risk of repetition of your actions is low. Further, the panel does not find that serious damage to public confidence in the nursing profession would occur if no interim order was made and noted that *'the bar is set high'* before an interim order on public interest grounds alone can be made.

The panel concluded that an interim order is not necessary and would not be appropriate or proportionate in this case.

That concludes the determination.