

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

**Substantive Hearing  
Monday 12 August 2024 - Tuesday 13 August 2024  
Thursday 26 September 2024 - Friday 27 September 2024**

Virtual Hearing

**Name of Registrant:** **Slybeat Tirivanhu Muronda**

**NMC PIN** 05G0341E

**Part(s) of the register:** Nurses part of the register Sub part 1 RNA: Adult nurse, level 1 (11 April 2006)

**Relevant Location:** Staffordshire

**Type of case:** Conviction and Misconduct

**Panel members:** Adrian Ward (Chair, Lay member)  
Sally Shearer (Registrant member)  
Kamaljit Sandhu (Lay member)

**Legal Assessor:** Paul Hester

**Hearings Coordinator:** Rebecka Selva

**Nursing and Midwifery Council:** Represented by Giedrius Kabasinskas (12-13 August 2024)  
Mohsin Malik (26-27 September 2024), Case Presenter

**Mr Muronda:** Present and represented by Tope Adeyemi instructed by Royal College of Nursing (RCN)

**Facts proved by way of admission:** Charges 1 and 2

**Facts proved:** Charge 3

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

**Sanction:**

**Suspension order (3 months)**

**Interim order:**

**No order**

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

During the hearing, Ms Adeyemi, on your behalf, made a request that this case be held partly in private on the basis that proper exploration of your case involves personal matters. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Malik, on behalf of the Nursing and Midwifery Council (NMC) 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 in connection with your personal matters as and when such issues are raised in order to protect your privacy.

### **Details of charge**

The panel was provided with the details of charge within the papers provided to it by the NMC.

That you, a registered nurse:

1. On 11 December 2020 were convicted at Stafford Crown Court of knowingly / recklessly engage in commercial practise contravening regulation 3(3)(a) distorting behaviour of average consumer.
2. Failed to disclose you were charged with the offence set out in charge 1 above to the NMC in a timely manner.

3. Your actions at charge 2 lacked integrity in that you had a professional obligation to disclose that you were charged with a criminal offence to your regulator as soon as you could, and you failed to do so.

AND in light of the above, your fitness to practise is impaired by reason of your conviction as set out in charge 1 above, and your misconduct as set out in charges 2-3 above.

At the outset of the hearing, the panel heard from Ms Adeyemi who informed it that you made admissions to charges 1 and 2 and denied charge 3. However, these responses were subsequently vacated as both parties agreed that the correct schedule of charge was sent out with the notice of hearing. The panel therefore proceeded with the charges within the notice of hearing.

That you, a registered nurse:

1. On 11 December 2020 were convicted at Stafford Crown Court of knowingly / recklessly engage in commercial practise contravening regulation 3(3)(a) distorting behaviour of average consumer, contrary to the Consumer Protection from Unfair Trading Regulations 2008.
2. Failed to disclose you were charged with the offence set out in charge 1 above to the NMC in a timely manner.
3. Your actions at charge 2 lacked integrity in that you had a professional obligation to disclose that you were charged with a criminal offence to your regulator as soon as you could, and you failed to do so.

AND in light of the above, your fitness to practise is impaired by reason of your convictions as set out in charge 1 above, and your misconduct as set out in charges 2-3 above.

## **Admission to charge**

Following the reading of the charges as set out in the notice of hearing, Ms Adeyemi submitted that you admitted to charges 1 and 2 and denied charge 3.

The panel therefore found charges 1 and 2 proved by way of admission.

## **Background**

This case involves criminal convictions for two offences contrary to The Consumer Protection from Unfair Trading Regulations 2008.

On 21 March 2019 information was laid against you by the Trading Standards department of Staffordshire County Council in respect of the above criminal matters.

On 11 December 2020 at Stafford Crown Court, you pleaded guilty to the offences of knowingly/recklessly engaging in commercial practise contravening reg 3 (3)(a) distorting behaviour of average consumer.

On 28 June 2023 at Stafford Crown Court, you were sentenced to 12 months imprisonment suspended for 18 months, ordered to pay a Victim Surcharge of £140.00.

Your Suspended Sentence requirements were that:

- You must undertake Rehabilitation Activity requirement for a maximum of 10 days.
- You must carry out unpaid work for 120 hours before 18 June 2024.
- You must pay £2500.00 towards the cost of the prosecution.

You self-referred on 19 July 2023 and told the NMC that you bought cars from Japan for personal use and then sold them every time you needed to buy another one. Trading Standards discovered that some of the cars were sold onto buyers upon the basis of a significantly different mileage from that detailed in their history in their country of origin.

You told the NMC that, partly due to the language barrier, you overlooked the importance of thoroughly investigating the vehicles' history before selling since all the cars were in good condition and had never had any complaints or issues from the buyers.

### **Decision and reasons on facts**

In reaching its decision on charge 3, the panel took into account the documentary evidence in this case together with the submissions made by Mr Kabasinskas on behalf of the NMC and by Ms Adeyemi on your behalf.

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

Before making any findings on the fact, the panel heard and accepted the advice of the legal assessor.

The panel then considered the disputed charge and made the following finding.

### **Charge 3**

“3. Your actions at charge 2 lacked integrity in that you had a professional obligation to disclose that you were charged with a criminal offence to your regulator as soon as you could, and you failed to do so.”

### **This charge is found proved.**

The panel put your admission to charge 1 out of its mind when considering charge 3 and considered charge 3 separately.

The panel noted that you admitted charge 2 which relates to your failure to disclose the fact that you had been charged with the criminal matters in charge 1 to the NMC in a timely manner. Charge 3 alleges that in not making the disclosure in charge 2 in a timely manner that you lacked integrity in that you had a professional obligation to disclose the fact that you were charged to the NMC as soon as you could.

In reaching its decision, the panel referred to the NMC code, specifically 23.2:

*'23.2 tell both us and any employers as soon as you can about any caution or charge against you...'*

The panel referred to an email from Trading Standards to the NMC dated 21 June 2024, outlining that an information was laid against you on 21 March 2019. The laying of an information is the equivalent of you being charged but in the course of a private prosecution. The prosecution was a private prosecution in that it was made by the Trading Standards department of a local authority. The panel accepts that this was a private prosecution by the Trading Standards and not the police or Crown Prosecution Service. Nevertheless, the panel decided that the laying of the information should have been clear to you that you were being charged with serious criminal matters and that you had a duty under the Code to tell the NMC of these charges.

The panel considered the Certificate of Conviction from Stafford Crown Court dated 18 March 2023. The certificate states that you appeared before the Crown Court on 11 December 2020 and entered guilty pleas to the criminal charges. The panel decided that if there was any misapprehension on your part as to the laying of the charges then this misapprehension should have been made clear to you by your appearance at a plea hearing in the Crown Court.

In considering the allegation that your failure to notify the NMC of the criminal charges demonstrated a lack of integrity, the panel referred to *Wingate and Evans v Solicitors*

*Regulation Authority* [2018] EWCA Civ 366. The panel noted from this judgement that as a matter of common parlance and as a matter of common law, integrity is a broader concept than dishonesty. In particular, the panel gave close regard to paragraph 97 of the judgement as follows:

*'In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.'*

From this passage in *Wingate* the panel noted that integrity relates to the higher standards which are expected by society in relation to a professional person such as a registered nurse. Further, the profession itself and therefore the regulator has expectations of nurses which include compliance with the Code.

The panel therefore determined that the above passage from *Wingate*, in your case, directly relates to the NMC Code 23.2 in that a registered nurse must tell the NMC about any caution or charge against them as soon as possible.

The panel decided that, on balance of probabilities, charge 3 is found proved. In coming to this conclusion, the panel noted the lengthy timeline. It appears that you were charged in March 2019; pleaded guilty in December 2020 and sentenced in June 2023. You did not make your self-referral until 19 July 2023. The panel decided that at each of these stages there was a more than adequate opportunity for you to act with integrity and inform the NMC in compliance with the Code.

### **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**

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (GMC) (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 Kabasinkas invited the panel to take the view that the charges 2 and 3 which were found proved, amounted to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision. He further referred the panel to *Nandi v GMC* [2004] EWHC 2317 (Admin) and NMC Guidance FTP-2A.

Mr Kabasinkas identified the specific, relevant standards where your actions amounted to misconduct. In reference to NMC Guidance FTP-2A, he submitted that your conduct outside of professional practice is capable of undermining public trust and confidence in

the profession, raising fundamental questions about the nurse, midwife or nursing associate's ability to uphold the values and standards set out in the Code.

Mr Kabasinkas referred to the Code, and specifically found the following sections to support a finding of misconduct:

***'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'*

***23 Cooperate with all investigations and audits***

*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)'*

Ms Adeyemi referred the panel to your reflective statement and submitted that you do not seek to minimise the charges against you.

Ms Adeyemi submitted that it is accepted by you that your actions did fall short of what was expected in the circumstances, and you understand that what you did was serious and was wrong however, it is up to the panel if it considers that your actions amount to misconduct.

**Submissions on impairment**

Mr Kabasinkas moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included

the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Mr Kabasinkas submitted that the panel will need to consider impairment as a result of your conviction and misconduct.

Mr Kabasinkas submitted that the nature of the charges against you were serious and resulted in a custodial sentence.

Mr Kabasinkas informed the panel that you have been working as a nurse since February 2018 and whilst the NMC accepts that the allegations are not linked to your clinical practice, there are still elements of public interest that are engaged in this case. He referred the panel to NMC Guidance DMA-1 and submitted that this case raises a fundamental question with regard to your ability to uphold values and standards set out in the Code. He submitted that if a finding of impairment was not found then the confidence in the profession would be undermined.

Mr Kabasinkas referred to Dame Janet Smith's "test", and submitted that limbs b), '*has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*' and c), '*has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession*' are engaged in this case. He submitted that as a result of your conviction, you have brought disrepute to the profession.

Mr Kabasinkas submitted that limb d), '*has in the past acted dishonestly and/or is liable to act dishonestly in the future*', should be considered more carefully. He submitted that whilst the NMC is not charging in relation to dishonesty, the Trading Standards set out what the criminal charges were in relation to - specifically that you '*misled*' customers. He also referenced the prosecuting attorney in your criminal court case who stated that you were in possession of information to suggest that there is some discrepancy in the

mileage which was not presented to the buyers. He submitted that it is at the panel's discretion whether or not limb d) is engaged.

Mr Kabasinkas referred to *Nicholas-Pillai v GMC* [2015] EWHC 305 (Admin) in raising whether your case suggests attitudinal problems. He submitted that your case raises issues of trustworthiness as a registered nurse, and given that all charges are effectively proved, your behaviour indicates of underlying attitudinal issues, and as such, your conduct clearly falls below the standards expected of a nurse.

Mr Kabasinkas submitted that in relation to you withholding information, whilst there are many courses you could undertake, the courses are unlikely to address the issue as you took conscious decisions.

In reference to NMC Guidance FTP-14, Mr Kabasinkas submitted that your insight is insufficient. He submitted that even after your conviction you still do not acknowledge that you were acting as a trader even though you had a trader's car insurance policy covering numerous vehicles. He also referenced the judge's remark in on 28 June 2023 who stated that '*this was a highly sophisticated operation*'. He reminded the panel that you purchased eight vehicles over approximately 12 to 18 months which is a high turnover of vehicles which do not align with your submissions of the cars being bought solely for private ownership and personal use. As such, he submitted that you attempted minimise your actions or the seriousness of the offence.

Mr Kabasinkas, with regard to your statements that you overlooked the importance of checking the history of the cars prior to selling them, submitted that you took a deliberate decision not to disclose that there may have been discrepancies with the mileages of the cars, therefore, this was not an accidental oversight. He highlighted that although you did not intentionally sell cars with incorrect mileage and history, you were reckless in that you did not check these details. He reminded the panel that you pleaded guilty in this regard to eight cars.

Mr Kabasinkas referred the panel to NMC Guidance FTP-2c and submitted that given that your suspended sentence is still live and incomplete, it indicates that your fitness to practice is impaired. He further submitted that with regard to charge 2, it was a deliberate decision on your part to not report your criminal charge to your regulator.

In reference to FTP-15b, Mr Kabasinkas submitted that your ability to practice is impaired, and you cannot practice kindly, safely and professionally.

Ms Adeyemi submitted that your fitness to practice is not impaired. She submitted that you are able to practice kindly, safely and professionally.

Ms Adeyemi reminded the panel that you referred yourself to the NMC. She submitted that with regard to your admissions to charges 1 and 2, this is demonstrative of insight and that you have a clear understanding of your past actions. She submitted that whilst you denied charge 3, it is both unfair and inappropriate to conclude that by making a denial in the form of a defence it is suggestive of a lack of insight. She submitted that the crux of the matter has always been admitted by you.

Ms Adeyemi submitted that the conduct that gave rise to the proceedings and conviction took place five years ago and that is a sufficient period of time for a panel to be able to assess whether someone's practice or attitude has truly changed. She submitted that since 2017, there has been no repetition or other issue raised against you.

Ms Adeyemi clarified that the documents that were provided with each vehicle were in Japanese, although the numbers were in English, they were still mixed up within Japanese descriptions which made reading the documents somewhat confusing.

Ms Adeyemi submitted that, with regard to the high turnover of cars, you have never denied this, and you have been candid about your relationship with cars which developed into an obsession. She clarified for the panel that you had retained one car and sold six cars at the point of conviction and sold one more car thereafter.

Ms Adeyemi submitted that it was your obligation to ensure that you sold cars as were described and while thankfully there were no road safety issues, what you did had an impact on and would inevitably have had an impact on consumer confidence which you accept fully. You accept that this was damaging behaviour which you should have never engaged in. However, Ms Adeyemi reminded the panel that the Trading Standards never stated that you adjusted odometers, nor did they say that you were being dishonest.

Ms Adeyemi informed the panel that with regard to your sentence, the community element is completed, and you no longer attend probation because you were considered to be low risk.

Ms Adeyemi referred the panel to the case of *Council for the Regulation of Health Care Professionals v General Dental Council (GDC) and Alexander Fleischmann* [2005] EWHC 87 (Admin) which stated that a practitioner should not be permitted to work in circumstances that their sentence is still ongoing. This was developed in the case of *Professional Standards Authority (PSA) v GDC and Naveed Patel* [2024] EWHC 243 (Admin) where the court stated that matters are to be looked on at an individual basis with reference to public protection and maintenance of public confidence as opposed to one overarching principle for all cases.

Ms Adeyemi submitted that there are no public protection issues arising in this case and she reminded the panel that the NMC accept that none of the allegations relate to your clinical competence.

Ms Adeyemi submitted that it may be a concern that there is a potential risk flowing from the attitudinal issues that can be connected to someone found guilty of breaking the law, however, there are many factors that the panel can consider in order to gain reassurance. Firstly, that there has been no repetition, even in June 2023, the prosecution described the matter as '*being of some antiquity*'. She referred the panel to your reflective statement and submitted that you have reflected on your behaviour and taken responsibility for it. She

submitted that you have understood the effect that your past actions could have on patients and colleagues.

Ms Adeyemi referred the panel to the multiple courses and reading that you have completed relevant to your practice. She submitted that this demonstrates your commitment to show that you have taken all possible steps to ensure that your past behaviour is not repeated.

Ms Adeyemi informed the panel that you work four days a week at Blackpool Hospital as a band 5 nurse, she referred the panel to a letter from Locum Vision Medical Recruitment Agency which outlines that they have no issues with your performance, that you have had positive feedback and that they continue to book you for shifts. She submitted that this indicates that you are of minimal risk to the public.

Ms Adeyemi submitted that public interest would not be jeopardised by finding your practice not impaired. She informed the panel that you have previously undertaken unpaid work where you were put in a position of trust. She referred the panel to comments made by your probation officer in that you were always polite, on time and respectful to all the staff you engaged with. As such, she submitted that a member of the public would appraise all the steps you have taken, your engagement with the NMC and your reflection.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Fleischmann*, *Roylance*, *Nandi v GMC* [2004] EWHC 2317 (Admin), *GMC v Meadow* [2007] QB 462 (Admin) and *Nicholas-Pillai v GMC* [2015] EWHC 305 (Admin). He also referred the panel to NMC Guidance FTP-2a.

### **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:

***'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*

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

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

The panel appreciated that a breach or breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that you had a duty to inform the NMC in a timely manner of your criminal charge and conviction and you failed to do so. The panel further considered that integrity is a core part of the profession, and explicitly stated in the Code, and as such, other practitioners would find your past actions deplorable, and members of the public would be concerned if a finding of impairment were not made.

The panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

**Decision and reasons on impairment**

The panel next went on to decide if as a result of the misconduct and conviction, 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. The panel noted that the regulatory charges related to lack of integrity but not dishonesty.

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) ...’*

The panel found that patients were not put at risk and were not caused any harm as a result of your misconduct. However, your misconduct had breached the fundamental tenets of the nursing profession, and your conviction brought its reputation into disrepute.

Therefore, the panel found that limbs b and c of the Shipman test are engaged when looking to the past.

In assessing whether you are liable in the future to cause unwarranted risk of harm, bring the profession into disrepute or breach one of the fundamental tenets of the medical profession the panel applied the test as set out in *Cohen v GMC* [2008] EWHC 581 (Admin) with regard to finding impairment:

- ‘a. is easily remediable*
- b. and that is has already been remedied*

*c. and that it is highly unlikely to be repeated.'*

The panel decided that your misconduct is remediable, albeit not easily as there is a finding that you have acted with a lack of integrity in relation to your regulator.

The panel then considered whether there has been sufficient evidence provided by you knowing that you have remedied your shortcomings.

The panel noted that you have provided mitigating material in relation to relevant training, further reading, a positive testimonial, and a written reflection. The panel also had regard to your oral evidence.

The panel noted that whilst your reflective piece and your oral evidence included apologies for your misconduct and expressed regret, it was concerned that there was no reference to the impact of your misconduct on the reputation of the nursing profession or upon your colleagues. Further and importantly, the panel considered that you have not sufficiently addressed how patients or their families would view you if they knew of the criminal conviction and your lack of integrity. The panel therefore decided that you have not sufficiently strengthened your practice.

When considering the likelihood that your misconduct would be repeated, the panel felt that your oral evidence provided more reassurance than your written reflection. The panel noted that no issues have been raised about your practice and that you have positively engaged with the NMC since the start of these proceedings in July 2023. However, the panel was concerned that the lack of insight indicated attitudinal issues, and it was not assured that you fully understood the nature, extent and professional implications of your convictions. The panel was further concerned that whilst not fully understanding your convictions, you had received a suspended custodial sentence from the Crown Court.

The panel considered that you are making steady progress with regard to strengthening of your practice but was not sufficiently assured that there was no real risk of repetition. The

panel therefore decided that a finding of impairment is necessary on the ground of public protection.

The panel bore in mind the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required as it concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

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 suspension order for a period of 3 months. The effect of this order is that the NMC register will show that your registration has been suspended.

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 Malik informed the panel that in the Notice of Hearing, the NMC had informed you that it would seek the imposition of a striking off order if it found your fitness to practise currently impaired.

Mr Malik submitted that the appropriate and proportionate sanction in this case is a striking off order.

Mr Malik with reference to NMC Guidance SAN-1, submitted that there are the following aggravating factors: that you did not inform the NMC when you were charged nor when you entered a guilty plea to the offence in December 2020, that you continued working and that you provided an inaccurate account to the NMC as to the basis of your plea.

Mr Malik then submitted the mitigating factors: that you entered a guilty plea early, your self referral to the NMC, your partial insight and remorse mentioned both in your reflective statement and in your oral evidence, that the incident did not take place in a clinical setting, and that you were given a suspended sentence of imprisonment.

Mr Malik referenced *Bolton v Law Society* [1994] 1 WLR 512 and submitted that the case illustrated the principle that the reputation of the profession is more important than the fortunes of any individual member of that profession. He also referenced NMC Guidance FTP-2c and submitted that your offending took place over a period of time, and it raises questions about your trustworthiness. He submitted that your conduct fell far below the standards of a registered nurse.

Mr Malik reminded the panel that you are still subject to a suspended sentence.

Mr Malik submitted that it would be inappropriate for the panel to consider taking no further action or imposing a caution order in view of the seriousness of this case. He submitted that this would also not be in the public interest.

Mr Malik referenced NMC Guidance SAN-3c and submitted that a conditions of practice order would also not be an appropriate sanction as there are no clinical concerns which have been identified in this case. He submitted that given the panel was concerned that you provided a lack of insight which indicated attitudinal issues, there are no workable conditions that could be formulated to deal with those concerns. He further submitted that although you are making steady progress with regard to strengthening your practice, there is no assurance that there is no real risk of repetition.

Mr Malik referenced NMC Guidance SAN-3d and submitted that the concerns raised are serious and indicative of deep-seated attitudinal issues, your actions were not an isolated one-off issue, and your insight is limited, hence there remains a real risk of repetition. He submitted that a suspension order is therefore not appropriate as your conduct is incompatible with remaining a registered nurse. He referenced your apology for your misconduct in your reflective statement and your oral evidence and reminded the panel that you did not refer to the impact of your misconduct on the reputation of the nursing profession. He submitted that you do not appreciate the seriousness of your wrongdoing.

Mr Malik referenced NMC Guidance SAN-3e and submitted that a striking off order is the only appropriate and proportionate order given that what you have done is fundamentally incompatible with being a registered nurse. He submitted that the nature and seriousness of your misconduct calls into question your integrity, and as such, trust and confidence in the profession can only be maintained by the imposition of a striking off order. He submitted that to allow you to continue to practice would undermine public confidence in the profession and the NMC as a regulator.

Mr Malik reminded the panel that you had a duty to inform the NMC in a timely manner of your criminal charge and conviction and failed to do so. He also reminded the panel that you did not admit to charge 3 which addressed your lack of integrity which was subsequently found proved.

Mr Malik submitted that higher courts would expect a striking off order in this case and any other sanction would be unduly lenient.

Ms Adeyemi's submitted that you are extremely sorry and ashamed for your conduct, namely, the behaviour that led to the conviction and your conduct in not letting your regulator know what happened at the appropriate time.

Ms Adeyemi reminded the panel that the purpose of a sanction is not to punish a nurse but rather focus on public protection. She submitted that to remove your name from the register is not necessary to protect the public.

Ms Adeyemi informed the panel that the rehabilitative aspect of your sentence is completed but the suspended sentence given in July 2023 is still ongoing.

Ms Adeyemi submitted that the *Fleischmann* principle outlines that a practitioner should not be permitted to resume practise until satisfactory completion of a sentence. She submitted that you have completed the rehabilitative aspect of your sentence, and you have submitted a positive testimonial from your probation officer.

Ms Adeyemi informed the panel that you were not subject to any interim order following your self-referral to the NMC. She submitted that this indicates that there is no risk identified in your practice.

Ms Adeyemi referred the panel to *PSA v GDC and Naveed Patel* and submitted that a panel must impose a sanction that is proportionate and only necessary to maintain public confidence.

Ms Adeyemi submitted that the aggravating factor in this case is relating to the conviction which had the potential to damage consumer confidence. She submitted that your behaviour which led to the conviction was disreputable as nurses are held in high regard and a member of the public would not expect them to behave like that.

Ms Adeyemi submitted that, with regard to Mr Malik's submission of you not having informed the NMC in a timely manner-this is a charge in itself; therefore, it is not fair nor appropriate to denote it as an aggravating factor.

Ms Adeyemi outlined the mitigating factors; that you admitted to the bulk of the allegations, that you admitted to the allegations before the Crown Court, that you fully engaged with both the NMC and criminal proceedings, the positive testimonial from your probation officer, that you have had no other referrals in your near two-decade career as a nurse, and that you have had no concerns raised in the period of time you have spent working following the convictions.

Ms Adeyemi submitted that with regard to the panel previously acknowledging that you have provided some insight although it could be better, that it was never envisaged that if a registrant does not have fully formed or perfect insight that they cannot continue to work as a nurse. She submitted that guidance and case law support that registrants are permitted to continue to work, notwithstanding the fact that they have more to learn.

Ms Adeyemi submitted that a striking off order would be wholly disproportionate and is not necessary in order to uphold the standard, protect the public or maintain public confidence in the NMC as regulator.

Ms Adeyemi submitted that you have provided some insight, and you are willing to develop this, you have remained engaged with the process and you have taken responsibility and held yourself accountable for your actions. She reminded the panel that you have presented no evidence of harmful, deep seated personality or attitudinal problems, and there is no evidence of any repetition of the behaviour that gave rise to these proceedings. She submitted that a suspension order is not needed to address the risk in this case, however, if the panel was to disagree, she invited the panel to consider that a suspension order be imposed for not more than 3 months.



Ms Adeyemi submitted that you would abide by any conditions of practice order if it were imposed. She informed the panel that you have been working in an Accident & Emergency department regularly. She submitted that any possible conditions could include meetings with senior colleagues and submit reports of these meetings to the NMC and to undertake a structured programme.

Ms Adeyemi submitted that if the panel decided to impose a caution order, this would not seek to minimise the seriousness of your behaviour or actions. She reminded the panel that you have never, either in your written or oral evidence, stated that what you did was not wrong or not serious. She submitted that you have, from the outset of the hearing and criminal proceedings, taken full responsibility for your actions. She submitted that a caution order would serve as a deterrent and mark the seriousness of the case, and this order would remain on your record.

Ms Adeyemi informed the panel that you are a father [PRIVATE] which is challenging but you have managed so far in terms of your household's financial commitments.

Ms Adeyemi submitted that it is fully accepted that your personal circumstances are not as important as the reputation of the profession. However, she submitted that you currently work four days a week in an A&E department via a locum agency. She informed the panel that [PRIVATE], it would be extremely challenging if you were restricted from practise, but you understand the key consideration here is public interest.

Ms Adeyemi submitted that it cannot be denied that someone with a criminal conviction, who has shown a lack of integrity to their regulator, has opened the door for questions to be asked about their right to continuing to work as a nurse. However, she submitted that a member of the public who had access to all the facts and material of this case, would be satisfied that you had been held to account by the law and you had appeared before your regulator and been subject to a risk assessment. She submitted that a well-informed member of the public would be content that it would be appropriate for such an individual to be given the opportunity to continue to work as a nurse.

Ms Adeyemi submitted that you are aware that you have let the profession down, but, given the opportunity, you would strive to care for people to the highest standard and leave no room to doubt your integrity.

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

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

The panel took into account the following aggravating features:

- Criminal conviction for a serious matter

The panel also took into account the following mitigating features:

- Guilty plea before the Crown Court in the criminal proceedings
- Admissions to charges 1 and 2 in these regulatory proceedings
- Your self-referral to the NMC
- You have provided evidence of relevant training courses and reading
- Your reflective statement and oral evidence which contained some insight
- No previous fitness to practice concerns raised prior to this case
- You have engaged fully with the NMC and criminal proceedings
- You have apologised and expressed regret
- Your positive testimonial from your probation officer
- The offence did not take place in a clinical setting

- You have been working since the criminal conviction and there have been no concerns raised with your practice.

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the criminal conviction and the regulatory charges admitted and found proved. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the gravity of the conviction and your lack of integrity when failing to disclose the conviction to the NMC in a timely manner. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be relevant, proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*

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 misconduct identified in this case was not something that can be addressed through relevant conditions.

Furthermore, the panel concluded that the placing of conditions on your registration would not adequately address the seriousness of this case and public confidence would not be maintained.

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

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel has found that there are attitudinal issues in relation to your thinking about your criminal conduct in relation to being a nurse. However, the panel did not find these issues to be of a harmful or deep-seated nature. The panel was satisfied that there has been no further criminal conduct or regulatory misconduct since your conviction. The panel further noted that it has made a finding that your insight into your misconduct is incomplete and that there is a real risk of repeating similar behaviour.

The panel considered that your actions were disreputable and raised significant questions around your integrity, however the panel noted that it did not go as far as dishonesty.

It did go 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.

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 the NMC Guidance SAN-2, and the section headed 'Cases involving criminal convictions or cautions'. The panel noted:

*'Rather than rely on a criminal judge's assessment of seriousness in a criminal context, a panel will undertake a separate analysis of the underlying facts to understand how they may have impacted on the quality of care given, what they say about the professional's attitude and ability to practise safely and effectively going forward, and the likely effect that they would have on the public's confidence in the profession. The panel will have to decide how serious the behaviour is in the regulatory sense, by considering all the information before it, as well as our guidance, particularly our guidance on seriousness.'*

The panel considered that the issue in your case is the question of maintaining public confidence in the nursing profession. In relation to this, the panel noted within SAN-2 under the same heading the following:

*'Cases about criminal offending by nurses, midwives or nursing associates illustrate the principle that the reputation of the professions is more important than the fortunes of any individual member of those professions. Being a registered professional brings many benefits, but this principle is part of the 'price'.'*

In relation to this passage, the panel noted the legal authority of *Bolton v Law Society*. The panel also had regard to the following passage from *Wingate* which was considered at the fact-finding stage:

*'In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and*

*which the professions expect from their own members. ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.'*

The panel decided 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 Malik in relation to the sanction that the NMC was seeking in this case. However, the panel considered that a suspension order serves as an appropriate mark in relation to your behaviour. The panel decided that you have some insight and are making steady progress towards strengthening your practice, no clinical concerns have been raised and that there is a clear need for good clinicians to be in practice.

The panel determined that a suspension order for a period of 3 months was appropriate in this case to mark the seriousness of the misconduct.

The panel noted that you are still serving your criminal sentence. Whilst you have completed the Rehabilitation Activity and Unpaid work elements of your sentence the period which suspends the custodial sentence is still extant.

The panel carefully considered the general principle in *Fleischmann* and the judgement in *Naveed Patel*. In particular, the panel noted that in *Naveed Patel* the High Court held:

*'...both [Fleischmann] and the 'general principle' derived from it in the GDC guidance must bend to the overarching requirement to impose a sanction which is just, proportionate and only that which is necessary to maintain public confidence.'*

Further:

*'In many cases, no doubt, a suspension running concurrently with a period or part of the period over which the criminal penalty is served or is to be completed may be appropriate. That will follow the general principle in Fleischmann and meet public expectations.'*

In this regard, the panel noted that your suspended sentence ends on or about 28 December 2024 and that public confidence will be addressed by a suspension period of 3 months.

At the end of the period of suspension, another panel will review the order. At the review hearing the panel may revoke the order, or it may confirm the order, or it may replace the order with another order.

Any future panel reviewing this case would be assisted by:

- Evidence of further completed relevant training/courses.
- Updated testimonials from colleagues and line managers in work, paid or unpaid, addressing your integrity.
- Detailed reflective statement addressing integrity in a professional context, its impact when lacking upon the public perception of the nursing profession and what you have learnt from your training/courses.
- Your continued engagement and attendance at NMC proceedings.

### **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 Malik. He submitted that an 18-month interim suspension order is required to cover the eventuality of an appeal made by you.

Mr Malik submitted that the substantive order will not come into effect until some 28 days after this hearing and should you lodge an appeal, the substantive order will not come into effect pending the resolution of the appeal. He submitted that this would permit you to practise without restriction during that time and would therefore fail to protect the public or take into consideration the public interest.

Ms Adeyemi submitted that an interim order is not necessary as you have been working throughout this period without any issue. She reminded the panel that he is entitled to your appeal period and the risks in this case are not such that would necessitate some sort of interim measure prior to the suspension sanction taking effect.

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

The panel was satisfied that an interim order is not necessary for the protection of the public. The panel in its decision has not made a finding that there is an issue regarding public protection, but the suspension sanction was imposed in terms of maintaining public confidence of the nursing profession. Hitherto, the NMC have not made an application for an interim order and therefore it appears that the NMC had no issue with public protection prior to this hearing. The panel considered that the high bar of necessity for public protection is not met.



The panel considered the lower threshold for public interest but decided that the suspension sanction is imposed with the intention of marking the seriousness of your misconduct. The panel considered that you are not a risk to patients and public.

The panel, having heard this case, and in fairness to you decided that you may work until you serve your sanction, and this would allow you to put your affairs in order.

This will be confirmed to you in writing.

That concludes this determination.