

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

**Substantive Hearing
Tuesday, 4 February 2025 – Friday, 7 February 2025**

Nursing and Midwifery Council
10 George Street, Edinburgh, EH2 2PF

Name of Registrant: Aime Margaret Johnston

NMC PIN 1310421S

Part(s) of the register: Nursing, Sub part 1
RNMH, Registered Nurse - Mental Health (5
September 2016)

Relevant Location: South Ayrshire

Type of case: Misconduct

Panel members: Penelope Titterington (Chair, Lay member)
Margaret Jolley (Lay member)
Sharon Peat (Registrant member)

Legal Assessor: Gareth Jones

Hearings Coordinator: John Kennedy

Nursing and Midwifery Council: Represented by Stephen Page, Case Presenter

Ms Johnston: Not present and unrepresented

Facts proved: Charges 1, 2, 3, 4a, and 4b

Fitness to practise: Impaired

Sanction: **Suspension order (12 months)**

Interim order: **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Ms Johnston was not in attendance and that the Notice of Hearing letter had been sent to Ms Johnston's registered email address by secure email and to her registered address by recorded delivery and by first class post on 6 January 2025.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Ms Johnston's registered address on 7 January 2025. It was signed for against the printed name of '*JOHNSTON*'.

Mr Page, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Ms Johnston's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

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

Decision and reasons on proceeding in the absence of Ms Johnston

The panel next considered whether it should proceed in the absence of Ms Johnston. It had regard to Rule 21 and heard the submissions of Mr Page who invited the panel to

continue in the absence of Ms Johnston. He submitted that Ms Johnston had voluntarily absented herself.

Mr Page referred the panel to the documentation from Ms Johnston which included an email dated 7 January 2025 stating:

*'Good morning,
Yes please if you could send those through again I would appreciate it.
I am still happy for this to go ahead in my absence.
Kind regards,
Aime'*

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised *'with the utmost care and caution'* as referred to in the case of *R v Jones (Anthony William) (No.2) [2002] UKHL 5*.

The panel has decided to proceed in the absence of Ms Johnston. In reaching this decision, the panel has considered the submissions of Mr Page, the representations from Ms Johnston and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba [2016] EWCA Civ 162* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Ms Johnston;
- Ms Johnston has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;

- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Four witnesses are due to attend to give oral evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred four years ago;
- Further delay may have an adverse effect on the ability of witnesses to accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Ms Johnston in proceeding in her absence. Although the evidence upon which the NMC relies has been sent to her at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Ms Johnston's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

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

At the outset of the hearing, Mr Page made a request that the entirety of this case be held in private on the basis that proper exploration of Ms Johnston's case [PRIVATE] The

application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

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.

Having heard that [PRIVATE], the panel determined to hold the entirety of the hearing in private.

Details of charge

That you, a Registered Nurse:

1. During a nightshift over 26 November 2020 and 27 November 2020 slept whilst on duty.
2. During a nightshift over 26 November 2020 and 27 November 2020 failed to provide adequate care to Patient A.
3. On one or more occasions between July 2020 and 25 November 2020 slept whilst on duty.
4. Between 20 February 2024 and 3 January 2025 failed to cooperate with the NMC's investigation into your fitness to practise in that you:

(a) [PRIVATE]

(b) [PRIVATE]

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

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Mr Page under Rule 31 to allow the hearsay testimony of statements from the local investigation process into evidence. Despite numerous attempts, the NMC had not been able to obtain a signed, written statement from any of the three witnesses who made a number of local statements as part of the investigation process. Mr Page referred the panel to a range of correspondence over a period of years between the NMC and these witnesses in an attempt to obtain the signed witness statements. Mr Page submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced for the purpose of the internal investigations. He submitted that all the statements were consistent.

In the preparation of this hearing, the NMC had indicated to Ms Johnston in the Case Management Form (CMF), that it was the NMC's intention for these local statements to go before the panel. Despite knowledge of the nature of the evidence to be given in these statements, Ms Johnston made the decision not to attend this hearing. On this basis Mr Page advanced the argument that there was no lack of fairness to Ms Johnston in allowing these statements as hearsay testimony into evidence.

The panel considered that as Ms Johnston had been provided with a copy of the local investigation statements within the NMC evidence bundle which had been sent to her via secured email and by post to her registered address. The panel had already determined that as Ms Johnston had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine these witnesses in any case. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, of the opportunity of

questioning and probing that testimony. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

The panel had regard to the case of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) regarding the admissibility of hearsay evidence. The panel considered whether these statements were sole and decisive evidence. The panel noted that these statements are all consistent with the oral and documentary evidence of Witness 2 that Ms Johnston would sleep whilst on duty. In those circumstances the panel considered that the statements were relevant and not sole and decisive evidence going towards proof of charge 3. The panel noted that Ms Johnston was aware of these statements and the NMC's intention that they be placed before the panel but that she has not provided any objection or challenge to the content of the statements. The statements were given as part of a local disciplinary investigation and there is no indication from the evidence or from the witnesses' non-attendance that the statements may have been fabricated. The panel considered that reasonable attempts had been made to secure the attendance of the witnesses.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the hearsay evidence of the local investigation statements but would consider the appropriate weight once the panel had heard and evaluated all the evidence before it.

Background

The charges arose whilst Ms Johnston was employed as a registered nurse by Ayr Clinic, Priory Highbank (the Clinic). Ms Johnston was employed as a Staff Nurse working at Lochlea House since 2020.

The allegations arose in late November 2020 when Ms Johnson was reported for allegedly falling asleep on the nightshift of 26 to 27 November 2020 and failed to provide care to a

vulnerable patient. It emerged as part of the Clinic's investigation that Ms Johnston allegedly slept on other nightshifts between July and November 2020.

[PRIVATE].

Decision and reasons on facts

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 Page.

The panel has drawn no adverse inference from the non-attendance of Ms Johnston.

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

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

- Witness 1: Charge Nurse and Line Manager
- Witness 2: Healthcare Assistant who worked the night shift of 26 November 2020
- Witness 3: Charge Nurse who received handover on morning of 27 November 2020
- Witness 4: Director of Clinical Services who carried out the local investigation

- Witness 5: NMC Case Presentation and Preparation Team Case Coordinator

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by the NMC.

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

Charge 1

‘During a nightshift over 26 November 2020 and 27 November 2020 slept whilst on duty.’

This charge is found proved.

The panel heard from Witness 2 who was working on the same shift at Ms Johnston. The witness stated that shortly after 23:30 they saw Ms Johnston lying down on the couch in the lounge area and that she appeared to be sleeping. At this time a patient presented with [PRIVATE] requiring attention and Witness 2 and another member of staff had to go and wake Ms Johnston up to administer the *pro rae nata* (PRN) medication, after which Ms Johnston went back to sleep until 06:30. The panel noted that this was therefore beyond the allocated one and a half hour break.

The panel noted the local meeting notes from the interview of Witness 4 with Ms Johnston which stated:

‘[Witness 4] went over on the notes and the statements from the 2 HCAs and asked [Ms Johnston], from what she has suggested for most of the shift she had been sleeping whilst the 2 HCAs were making arrangements for the patient’s care. [Ms

Johnston] replied “Yeah”. [Witness 4] asked if this was a reasonable assumption, she replied “Yeah, probably”.

The panel considered that this supported the evidence of Witness 2 that Ms Johnston was asleep.

The panel also had regard to the local statement, which were admitted as hearsay evidence, which is from the other HCA on shift and confirm the account of Witness 2 that Ms Johnston was asleep on this shift.

Therefore, considering all of this the panel found this charge proved.

Charge 2

‘During a nightshift over 26 November 2020 and 27 November 2020 failed to provide adequate care to Patient A.’

This charge is found proved.

The duty rota for this shift shows that Ms Johnston was the sole registered nurse on duty with two HCAs.

The panel noted its findings above that Ms Johnston was asleep during the shift in question, and considered that in order to provide adequate care to a patient it is a requirement to be awake and aware of the surroundings and any issues that require nursing attention.

The panel heard from Witness 2 that the patient was known [PRIVATE] that they required one-to-one support and/or PRN medication when they [PRIVATE]. The panel noted that after administering the PRN medication it would be a requirement to monitor the patient in order to assess the effectiveness of the medication, and plan further interventions if

required. The panel considered that it would not be possible for the patient to be assessed by a registered nurse if the registered nurse on duty was asleep and that as a result Ms Johnston failed to provide treatment to a particularly vulnerable patient.

The panel noted that it was especially concerning as the patient had [PRIVATE] and that there is no indication that Ms Johnston further assessed, monitored, planned or implemented any further care for the patient to ensure they received adequate care.

The panel noted in the interview notes from Witness 4 it is stated:

'[Witness 4] asked [Ms Johnston] to describe what she thought were the roles and responsibilities of a Staff Nurse on duty. [Ms Johnston] stated "...keeping everyone safe and looked after". [Witness 4] suggested to [Ms Johnston] she wouldn't have been in a position to guarantee that. [PRIVATE]'

The panel found this to be consistent and supported the evidence of Witness 2 that Ms Johnston was asleep and not providing adequate care.

The panel therefore found this charged proved.

Charge 3

'On one or more occasions between July 2020 and 25 November 2020 slept whilst on duty.'

This charge is found proved

The panel heard from Witness 2 who was working on the night shift of 25 November 2020 and stated in their local investigation interview:

'[Witness 4] noted [Witness 2] isn't usually on nights and she agreed with this and advised she had been covering for another healthcare assistant. On the Wednesday night (25th November) [Ms Johnston] slept for most of the shift. There was no issues on the ward that night. [Ms Johnston] never advised [Witness 2] why she was sleeping for the majority of her shift. It was the first time [Witness 2] has done nights with her.'

The panel had regard to the shift rota which confirmed Witness 2 and Ms Johnston were working the night shift of Wednesday 25 November 2020.

The panel noted that in the local investigation statements, which had been admitted as hearsay evidence, all three witnesses stated that Ms Johnston would regularly sleep on shift for more than the allocated break period. While there were not dates provided to state exactly when this occurred, it was clear from the evidence that Ms Johnston only worked at Lochlea House between June 2020 and November 2020 as stated in the charge.

Colleagues who worked with Ms Johnston between June and November 2020 consistently indicated that she would frequently sleep whilst on shift. Given the number of witnesses speaking to Ms Johnston being asleep the panel considered that it could attach weight to the hearsay evidence.

Therefore the panel found that on the balance of probabilities it is more likely than not that Ms Johnston did sleep on other shifts between June 2020, when she started working at Lochlea House, and 25 November 2020. This charge is therefore found proved.

Charge 4a and 4b

4. Between 20 February 2024 and 3 January 2025 failed to cooperate with the NMC's investigation into your fitness to practise in that you:

(a) [PRIVATE]

(b) [PRIVATE]

This charge is found proved

[PRIVATE].

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 Ms Johnston's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's ability to practise kindly, safely and professionally.

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

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

Submissions on misconduct

In coming to its decision, the panel had regard to the case of *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 which defines misconduct as a '*word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.*'

Mr Page invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code) in making its decision.

Mr Page identified the specific, relevant standards where Ms Johnston's actions amounted to misconduct. He submitted that charges 1, 2, and 3 amount to misconduct as they are a failure to deliver the fundamental aspects of safe and effective nursing practice and expected professional conduct of a registered nurse. He submitted that charge 4 amounted to misconduct as it is an expectation of registered nurses to fully comply and assist in any investigation carried out by the NMC. By failing to return the requested forms Ms Johnson frustrated the NMC's responsibility to fully investigate the concerns and any mitigating factors. He submitted that this is a fundamental part of the NMC Code and a duty of all registered professionals.

Submissions on impairment

Mr Page 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 cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), and *Cohen v GMC* [2008] EHC 581 (Admin).

Mr Page submitted that the actions found proved placed patients at an unwarranted risk of harm, and potential actual harm in the instance of Patient A. He submitted that there have been no submissions from Ms Johnston to show that she has reflected on her actions or strengthened her practice and therefore there is a risk of repetition. Therefore he submitted that a finding of impairment is necessary on the grounds of public protection.

Mr Page submitted that Ms Johnston's actions were significantly below the standard expected of a registered nurse, both in the clinical setting and in her engagement with the NMC investigation process. As the actions breached the fundamental tenets of safe nursing practice he submitted that a finding of impairment is also necessary to maintain and uphold the proper professional standards and maintain confidence in the profession.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council* (No 2) [2000] 1 A.C. 311, *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 Ms Johnston's actions did fall significantly short of the standards expected of a registered nurse, and that Ms Johnston's actions amounted to a breach of the Code. Specifically:

'1.2 make sure you deliver the fundamentals of care effectively

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

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

8.2 maintain effective communication with colleagues

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

8.6 share information to identify and reduce risk

13.1 accurately identify, observe and assess signs of normal or worsening physical and mental health in the person receiving care

13.4 take account of your own personal safety as well as the safety of people in your care

19.4 take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public

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

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

23 Cooperate with all investigations and audits

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that the actions found proved in regards to Ms Johnston's clinical practice amount to serious misconduct and put patients at unwarranted risk of harm. The panel considered charge 4, regarding providing the NMC consent to [PRIVATE]. The panel noted that there is an expectation that as a registered

nurse one should comply with any fitness to practise investigations, and that this may include [PRIVATE]. The panel noted that Ms Johnston was informed that given the serious nature of the allegations the NMC did require this information.

[PRIVATE].

The panel found that Ms Johnston's 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, Ms Johnston's 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 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) ...'*

The panel finds that patients were put at significant risk of potential harm. Patient A may have experienced further physical and emotional harm as a result of Ms Johnston's misconduct. The panel find that Patient A's need for nursing care should have been assessed by Ms Johnston when they first sought assistance but was not because she was asleep. If this assessment had occurred it may have been that the further incidents of self-

harm and emotional distress may have been avoided. Ms Johnston's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel noted that by sleeping on duty on numerous occasions this was repeated behaviour. The panel decided that without evidence of insight there remains a risk of further repetition.

The panel considered that the three limbs of the *Grant* test, quoted above, are engaged in this case and that as a result a finding of impairment is necessary.

Regarding insight, the panel considered that Ms Johnston has not engaged with the NMC investigation process in any meaningful way. She has not provided any evidence of insight, remorse, remediation, or strengthening of practice. The panel considered that while the misconduct in this case is capable of being addressed there has been no information from Ms Johnston that she has done so, or is attempting to take steps to address the concerns. Therefore, the panel is of the view that there is a risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

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 determined that a finding of impairment on public interest grounds is required because the misconduct identified concerns the fundamental aspects of safe and effective nursing practise and that members of the public would be concerned if a nurse who acted in such a way while on shift was not found to be impaired.

In addition, the panel 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 Ms Johnston's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Ms Johnston's 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 one year. The effect of this order is that the NMC register will show that Ms Johnston's 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 Page informed the panel that in the Notice of Hearing, dated 6 January 2025, the NMC had advised Ms Johnston that it would seek the imposition of a striking off order if it found Ms Johnston's fitness to practise currently impaired. He submitted that there was a pattern of misconduct and that the actions put patients at a risk of suffering harm. He submitted that there has been no insight or mitigation put forward by Ms Johnston.

Decision and reasons on sanction

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

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

The panel took into account the following aggravating features:

- Lack of insight into failings
- A pattern of misconduct over a period of months
- Conduct which put patients at risk of suffering harm.

The panel also took into account the following mitigating features:

- [PRIVATE]
- Misconduct confined to a discrete period
- Previous good nursing practice

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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 Ms Johnston's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where '*the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.*' The panel considered that Ms Johnston's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the issues identified. 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 Ms Johnston's registration would be a sufficient and appropriate response. The panel is mindful that any

conditions imposed must be proportionate, measurable and workable. The panel took into account the SG, in particular:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*
- *The nurse or midwife has insight into any health problems and is prepared to agree to abide by conditions on medical condition, treatment and supervision;*
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.*

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 panel considered that as Ms Johnston has not engaged with the process or made any submissions it is not possible to formulate conditions and be assured that they would be complied with.

Furthermore, the panel concluded that the placing of conditions on Ms Johnston's registration would not adequately address the seriousness of this case and would not protect the public.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*

The panel was satisfied that in this case, the misconduct was not fundamentally incompatible with remaining on the register. The panel note that there was repetition over some months. [PRIVATE]. The panel considered that the other misconduct of Ms Johnston failing to provide information for the NMC investigation was not in itself sufficient to justify a striking off order.

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 Ms Johnston's 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 Ms Johnston. 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 Page in relation to the sanction that the NMC was seeking in this case. However, the panel considered that given the information [PRIVATE] and the otherwise positive working testimonials from colleagues that in this situation the misconduct identified is not fundamentally incompatible with remaining on the register.

The panel determined that a suspension order for a period of one year was appropriate in this case to mark the seriousness of the misconduct and would protect the public.

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:

- Ms Johnston's engagement and attendance at future hearings
- [PRIVATE]
- Insight into the incidents and reflection on her conduct
- Recent testimonials from work

This will be confirmed to Ms Johnston 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 Ms Johnston's 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 Page. He submitted that an interim suspension order of 18 months is necessary to protect the public and otherwise in the public interest to cover any possible appeal period.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months due to protect the public and otherwise in the public interest to cover any possible appeal period.

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

That concludes this determination.