

**Conduct and Competence Committee**  
**Substantive Hearing**  
**29 February 2016 – 1 March 2016**

Nursing and Midwifery Council, 2 Stratford Place, Montfichet Road, London, E20 1EJ

<b>Name of Registrant Nurse:</b>	Miss Erika Mundi
<b>NMC PIN:</b>	08G1869E
<b>Part(s) of the register:</b>	RNA, Registered Nurse (sub part 1) Adult Nurse, level 1 (4 February 2009)
<b>Area of Registered Address:</b>	England
<b>Type of Case:</b>	Misconduct
<b>Panel Members:</b>	Robin Stephenson (Chair Lay member) Nicola Neale (Registrant member) Neil Sykes (Lay member)
<b>Legal Assessor:</b>	Iain Burnett
<b>Panel Secretary:</b>	Atanas Angelov
<b>Miss Mundi:</b>	Not present and not represented
<b>Nursing and Midwifery Council:</b>	Represented by Louise Hartley, counsel, instructed by NMC Regulatory Legal Team.
<b>Facts proved:</b>	1, 2 (a), 2 (b) and 3
<b>Facts not proved:</b>	none
<b>Fitness to practise:</b>	Impaired
<b>Sanction:</b>	Striking-off order
<b>Interim Order:</b>	Suspension order (18 months)

## **Details of charge:**

*That you, a registered nurse:*

1. *On or around November 2013, contrary to conditions 1 and/or 2 and/or 3 and/or 10 of your NMC interim conditions of practice order, began employment at Highfield Care Home as an agency nurse and later took the position as permanent Nurse;*
2. *Failed to disclose to the following parties in that you were subject to an NMC interim conditions of practice order:*
  - a. *Highfield Care Home*
  - b. *24hr Recruitment that you were;*
3. *Your conduct as alleged in charge 2 above was dishonest in that you knew you were subject to an interim conditions of practice order and were required to inform prospective employers of it;*

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

## **Decision on Service of Notice of Hearing**

The panel was informed at the start of this hearing that Miss Mundi was not in attendance.

In the light of the information available, the panel was satisfied that notice had been served, as advised by the legal assessor, in accordance with Rules 11 and 34 of *The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (as amended)* (“the Rules”).

11 (2) *The notice of hearing shall be sent to the registrant*

*(b) in every case, no later than 28 days before the date fixed for the hearing.*

34 (1) *Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to*

*(a) her address in the register*

Notice of this hearing was sent to Miss Mundi on 21 January 2016 by recorded delivery to her address on the register, which complies with the rules of service.

### **Proceeding in the absence**

The panel then considered continuing in the absence of Miss Mundi. The panel heard the submissions made by Miss Hartley on behalf of the Nursing and Midwifery Council (NMC) and took account of the legal assessor's advice.

The panel was mindful that this was a discretion that must 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*.

In deciding whether to proceed in the absence of Miss Mundi, the panel weighed its responsibilities for public protection and the expeditious disposal of the case with Miss Mundi's right to a fair hearing. The panel further noted that there were two witnesses in attendance for the NMC and any further delay could have a detrimental effect on their memory of events.

The panel noted the contents of an email from Miss Mundi to the NMC dated 29 February 2016 in which she stated:

*"Sorry I could not make it because of difficulties with transportation"*

and the email dated 8 February 2016 in which she stated:

*“i (sic) will not be able to attend the appointment on the 29<sup>th</sup> of february (sic) due to financial issues...”*

The panel was also provided with a note of a telephone call dated 8 February 2016 between Miss Mundi and a case officer of the NMC in which she stated that she was happy for the hearing to proceed in her absence.

The panel was satisfied that Miss Mundi was aware of today’s hearing and it was of the view that she had chosen voluntarily to absent herself. An adjournment has not been requested and the panel had no reason to believe that an adjournment would result in Miss Mundi’s attendance. Having weighed the interests of Miss Mundi with those of the NMC and the public interest in an expeditious disposal of this hearing, the panel has determined to proceed in her absence.

### **Decision and reasons on application to amend charge**

The panel heard an application made by Ms Hartley, on behalf of the NMC, to amend the wording of charge no.2.

The proposed amendment was to delete the word ‘*in*’ in charge 2 and the words ‘*that you were*’ in charge 2 b), so that the charge reads as follows:

*“Failed to disclose to the following parties that you were subject to an NMC interim conditions of practice order:*

- a. Highfield Care Home*
- b. 24hr Recruitment”*

It was submitted by Ms Hartley that the proposed amendment was necessary to correct typographical errors and provide clarity to the charges.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

*28 (1) At any stage before making its findings of fact ...*

*(i) ... the Conduct and Competence Committee, may amend*

*(a) the charge set out in the notice of hearing ...*

*unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.*

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Miss Mundi and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

## **Background**

Miss Mundi's response form dated 23 July 2014 informed the NMC that she was employed by Highfield Care Home. This alerted the NMC to the fact that the registrant was potentially in breach of her Interim Conditions of Practice Order ('ICOP'), imposed on her in a linked case, which stipulated among other things that she must only work in a hospital environment.

The ICOP was imposed on Miss Mundi on 16 July 2013 as a result of a referral received by the NMC.

The ICOP was reviewed twice and confirmed with no variation on 23 January 2014 and 17 April 2014. The conditions of the ICOP relevant to this matter are:

- “1. You must not practice (sic) as an agency or bank nurse.*
- 2. You must confine your nursing practice to working as a direct employee in a hospital setting.*
- 3. At any time that you are employed or otherwise providing nursing services, you must place yourself and remain under the direct supervision of a workplace line manager, mentor or supervisor nominated by your employer, such supervision to consist of working at all times under the direct observation of a registered nurse of band 6 or above.*
- ...*
- 10. You must immediately inform the following parties that that you are subject to a conditions of practice order under the NMC’s fitness to practise procedures, and disclose the conditions listed at 1 to 9 above, to them:*
  - i. Any organisation or person employing, contracting with, or using you to undertake nursing*
  - ii. Any prospective employer (at the time of application)*
  - iii. Any educational establishment at which you are undertaking a course of study connected with nursing, or any such establishment to which you apply to take such a course (at the time of application)”*

The NMC contacted Miss Mundi in relation to a review of her interim order to be held on 8 August 2014. In response to communication from the NMC Miss Mundi emailed her case officer on 5 August 2014, stating: *“I have just started a new job as a permanent employee in a nursing home unfortunately there are no hospital jobs at the moment, that is why I felt like searching for another job, and more over (sic) I am currently under*

*supervision with my mentor, as soon as my personal development plan is completed and sign off (sic) I will post it to the NMC”.*

At the review on 8 August 2014, Miss Mundi’s ICOP was replaced with an interim suspension order (‘ISO’).

On 8 July 2014 Miss Mundi applied for and was successful in obtaining a permanent post as a registered nurse at Highfield Care Home (‘the Home’). In August 2014 Ms 1, the Home manager, conducted a check on Miss Mundi’s registration and discovered that she had been made subject to an interim order. Ms 1 then arranged a meeting with Miss Mundi and asked her about the restrictions on her practice in response to which Miss Mundi allegedly did not comment, but did produce a list of the conditions she was subject to. Ms 1 therefore informed her that her employment contract would be terminated immediately.

The NMC contacted Ms 1, who confirmed that Miss Mundi had commenced working at the Home as an agency nurse in November 2013. Ms 1 confirmed that whilst Miss Mundi was employed as an agency nurse Ms Mundi did not disclose to her that she was subject to an interim order.

The NMC also contacted 24hr Recruitment (“the Agency”) and obtained a statement from the Office Manager, Mr 1. Mr 1 confirmed that Miss Mundi joined the agency by completing an application form on 23 October 2013 and that during her registration to join the Agency, she did not disclose that she was subject to any restrictions on her practice.

### **Submissions on facts**

Ms Hartley submitted that insofar as charge 1 is concerned, it was clear from the evidence given by Ms 1 and Mr 1, that Miss Mundi had acted in breach of conditions 1, 2, 3 and 10 of her interim conditions of practice order.

In relation to charge 2, Ms Hartley submitted that the evidence given by Ms 1 and Mr 1 clearly indicated that neither the Home nor the Agency had been notified by Miss Mundi that she was subject to an interim order.

In relation to charge 3, Ms Hartley submitted that Miss Mundi's conduct as alleged in charge 2 was dishonest.

### **Decision on the findings on facts and reasons**

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel heard oral evidence from two witnesses called on behalf of the NMC: Ms 1, Manager of Highfield Care Home and Mr 1, Office Manager at the Agency.

The panel was also provided with a statement from Mr 2. The panel was informed that Miss Mundi had been notified that Mr 2 would not be required to attend to give oral evidence and it was proposed to read his statement to the panel. Miss Mundi had not objected to such a course of action.

The panel considered each charge and made the following findings:

The panel first considered charge 1.

That you, a registered nurse:

1. *On or around November 2013, contrary to conditions 1, 2, 3 and 10 of your NMC interim conditions of practice order, began employment at Highfield Care Home as an agency nurse and later took the position as permanent Nurse;*

**This charge is found proved.**

The panel was mindful that for charge one to be found proved, it had to be satisfied on the balance of probabilities that:

1. Miss Mundi had undertaken work as an agency nurse; and/or
2. Miss Mundi had undertaken work in a nursing home; and/or
3. While working at the Home, Miss Mundi was not at all times under direct supervision of a registered nurse of band 6 or above; and/or
4. While working for the Agency from November 2013 Miss Mundi failed to disclose to her Agency and to the Home that she was subject to a conditions of practise order.

In reaching its decision, the panel took into account the evidence of Ms 1 and Mr 1 called on behalf of the NMC. The panel found the NMC witnesses to be credible and reliable and their statements to be clear and consistent.

In her witness statement Ms 1 stated that Miss Mundi had started working as an agency nurse at the Home through the Agency in November 2013. It was confirmed by Mr 1 that Miss Mundi worked at the Home although he could not confirm the date on which she started.

In their evidence, both Ms 1 and Mr 1 stated that they had not been made aware by Miss Mundi of the interim conditions of practice imposed upon her registration. Ms 1 stated that she found out there was an order when she conducted a routine monthly check on Miss Mundi's registration sometime in August 2014 following Miss Mundi's appointment to a permanent post. The panel accepts that Miss Mundi provided a document containing the relevant conditions to Ms 1 only after the enquiry conducted by Ms 1 when she had discovered the restrictions on Miss Mundi's registration. This had been discovered 9 months after Miss Mundi had commenced work at the Home as an agency nurse and a few weeks after her subsequent appointment to a permanent position as a nurse at the Home.

Further, the panel had sight of copies of weekly agency returns relating to the shifts Miss Mundi had worked at the Home dated between January 2014 – July 2014.

On the basis of the evidence before it the panel was satisfied that it was more likely than not that Miss Mundi worked as an agency nurse, for the Home, in breach of conditions 1 and 2 of her interim conditions of practice order. The panel was also satisfied that she failed to disclose her ICOP to the Agency and the Home in breach of condition 10.

The panel also heard evidence from Ms 1 that Miss Mundi was mentored in the first week after obtaining a permanent role as a registered nurse within the Home on 8 July 2014. Ms 1 also stated that, whilst Miss Mundi worked as an agency nurse for the Home she had not been supervised by another registered nurse of band 6 or above as stipulated by condition 3 of the order and had worked alone on night shifts as the only registered nurse. The panel therefore found, on the balance of probabilities, that she was in breach of condition 3 of the interim order imposed upon her practice.

Accordingly, the panel found charge 1 proved.

The panel next considered charge 2.

That you, a registered nurse:

2. *Failed to disclose to Highfield Care Home and/or 24hr Recruitment that you were subject to an NMC interim conditions of practice order;*

**This charge is found proved.**

In reaching this decision, the panel took into account all the evidence in the case. The panel was mindful that for charge 2 to be found proved, it had to be satisfied on the balance of probabilities that:

- 1) Miss Mundi had a positive duty to disclose that she was subject to an NMC interim conditions of practice order to the Home and/or the Agency;
- 2) Miss Mundi failed to make such disclosure;

The panel considered that there is a general duty for nurses to be honest and trustworthy, which would include disclosing any information relevant to their character and fitness to practise to prospective employers. Also condition 10 of the interim order that Miss Mundi was subject to at the time, specifically stipulated that she '*must immediately inform*' any organisation or person using her to undertake nursing as well as any prospective employer (at the time of application) that she was under conditions of practice order.

The panel was mindful that Miss Mundi attended the interim order hearing on 16 July 2013 and that she must have been aware of the order imposed upon her registration. It was therefore satisfied that the onus was on Miss Mundi to inform all the relevant parties stipulated by condition 10 of her conditions of practice order that she was indeed subject to an order under the NMC's fitness to practise procedures.

As stated above in relation to charge 1, in their evidence, both Ms 1 and Mr 1 stated that they had not been made aware by Miss Mundi of the interim conditions of practice imposed upon her registration. Ms 1 stated that she found out there was an order when she conducted a routine monthly check on Miss Mundi's registration sometime in August 2014. The panel accepts that Miss Mundi provided a document containing the relevant conditions to Ms 1. However this was done only after Ms 1 had discovered the restrictions on Miss Mundi's registration. This had been discovered 9 months after Miss Mundi had commenced work at the Home

Mr 1 described the process for applying for a job through the Agency. He stated that following a preliminary stage at which registrants supply their details and information about their work experience and training there is an interview process at which they are given the opportunity to talk about any issues in relation to their practice. He stated that during her registration to join the agency Miss Mundi did not disclose that there were restrictions on her practice.

The panel accepts the evidence of Ms 1 and Mr 1.

The panel therefore found on the balance of probabilities that Miss Mundi failed to disclose to the Home and to the Agency that she was subject to an interim conditions of practice order.

Accordingly, it found charge 2 proved.

The panel next considered charge 3.

3. *Your conduct as alleged in charge 2 above was dishonest in that you knew you were subject to an interim conditions of practice order and that you must inform prospective employers of such;*

In reaching this decision, the panel applied the test as set out in *R v Ghosh [1982] Q.B. 1053*, as modified. This is a two part test in relation to dishonesty. Firstly, the panel had to determine whether Miss Mundi's actions were dishonest according to the standards of reasonable and honest nurses. Secondly, and only if the first test was met, the panel had to determine whether it is more likely than not that Miss Mundi realised that what she was doing was, by those standards, dishonest.

The panel has concluded that Miss Mundi did not disclose to the Agency or the Home that she was subject to an ICOP. The panel also concluded, on the evidence before it, that Miss Mundi knew that she was obliged to disclose such information and deliberately

concealed it as otherwise she would not have been able to obtain employment as a nurse at the Home. The panel asked itself whether reasonable and honest nurses would consider such actions as dishonest. It concluded they would.

In reaching its decision as to the second part of the test, the panel took into account that on 5 August 2014, in a letter to her case officer, Miss Mundi made the following statement: *“I have just started a new job as a permanent employee in a nursing home unfortunately there are no hospital jobs at the moment, that is why I felt like searching for another job, and more over I am currently under supervision with my mentor, as soon as my personal development plan is completed and sign off I will post it to the NMC.”*

The panel further had regard to a letter dated 28 January 2013 from the NMC to Miss Mundi, which she produced in support of her application to join the agency in September 2013. It stated that Miss Mundi’s status on the Register was ‘effective’ without any reference to restrictions or conditions of practice. This was correct as of the date of the letter. However, conditions of practise were imposed on Miss Mundi’s registration on 16 July 2013 at a hearing at which she was present. At the time she produced the letter, in September 2013, she knew its contents were no longer accurate.

The panel was of the view that Miss Mundi had ample opportunity to disclose that she was subject to conditions of practise and concluded that she deliberately concealed this in order to gain employment as a registered nurse.

The panel has determined that Ms Mundi clearly knew her actions in charge 2 were dishonest. The panel considered that this was a clear case of dishonesty.

Accordingly, the panel found charge 3 proved.

## Submission on misconduct and impairment

Having announced its finding on the facts, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Miss Mundi's fitness to practise is currently impaired. The NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

In her submissions Ms Hartley invited the panel to take the view that Miss Mundi's actions amount to a breach of The Code: Standards of conduct, performance and ethics for nurses and midwives 2008 ("the Code"). She then directed the panel to specific paragraphs and identified where, in the NMC's view, Miss Mundi's actions amounted to misconduct. Ms Hartley referred the panel to the case of *Roylance v 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.

Ms Hartley submitted that honesty and integrity are considered to be the bedrock of a nurse's practice. Dishonesty is particularly serious as it can undermine the trust the public place in the profession. She submitted that Miss Mundi breached the interim order imposed on her registration for the purpose of making a financial gain by obtaining employment. She also submitted that by deliberately concealing the restrictions on her practice from the Agency and the Home, Miss Mundi acted dishonestly. Also Miss Mundi has perpetuated her dishonesty over a sustained period of time and to a number of parties. Ms Hartley submitted that Miss Mundi's actions represented a serious departure from the standards expected of a registered nurse and the panel can be satisfied that each of the facts found proved amounted to serious misconduct.

Ms Hartley then 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. Ms Hartley invited the panel to consider the test set out by Dame Janet Smith in her fifth Shipman report, as endorsed

in the Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin). She stated that the restrictions imposed upon Miss Mundi's practice were imposed for the protection of the public and by breaching them she has put patients at a potential risk of harm. Further, Ms Hartley submitted that by completely disregarding the interim order imposed by the Regulator and concealing the breaches, Miss Mundi has brought the nursing profession into disrepute. She stated that public confidence in the profession and the NMC as a regulator would be undermined if Miss Mundi were to be permitted to return to unrestricted practise.

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

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

### **Decision on misconduct**

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The code: Standards of conduct, performance and ethics for nurses and midwives 2008* (the Code).

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

The panel was of the view that Miss Mundi's actions did fall significantly short of the standards expected of a registered nurse, and that her actions did amount to a breach of the Code. Specifically:

## **Preamble**

*The people in your care must be able to trust you with their health and wellbeing*

*To justify that trust, you must:*

- *Be open and honest, act with integrity and uphold the reputation of your profession.*

## **The numbered standards**

39 *You must recognise and work within the limits of your competence*

51 *You must inform any employers you work for if your fitness to practise is called into question*

61 *You must uphold the reputation of your profession at all times.*

The panel bore in mind that not every act falling short of what would be proper in the circumstances, and not every breach of the Code, will be sufficiently serious such that it can properly be described as misconduct. Accordingly, the panel had careful regard to the context and circumstances of the matters found proved.

On 16 July 2013 a panel of the Investigating Committee imposed an interim conditions of practice order which included restricting Miss Mundi from working as an agency nurse, from working at any place other than a hospital setting and from working without direct supervision. Miss Mundi attended the interim order hearing and was sent written notification of the outcome and therefore must have been fully aware of the order imposed upon her registration. It is clear that the conditions imposed were to protect the patients and the public interest. Nonetheless, in October 2013 Miss Mundi applied for a job at the Agency in direct breach of her conditions. She was subsequently assigned to work at the Home, where she continued to work as a registered nurse and without supervision, again in breach of her conditions, until August 2014. Further, Miss Mundi

deliberately concealed the restrictions on her practice from both the Agency and the Home.

The panel considers her wilful disregard of the interim order of the Regulator, and her dishonesty, to be a fundamental departure from the standards expected of a registered nurse and that her actions constituted a breach of a fundamental tenet of the profession.

The panel concluded that by her actions Miss Mundi put patients at a potential risk of harm and failed to uphold the reputation of her profession. Her behaviour fell seriously short of the standards reasonably expected of a nurse and were in the panel's view sufficiently serious to amount to misconduct.

### **Decision on impairment**

The panel next went on to decide if, as a result of her misconduct, Miss Mundi's fitness to practise is currently impaired.

Nurses occupy a position of privilege and trust in society and are expected at all times to be honest and open and to act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.*

Mrs Justice Cox went on to say in Paragraph 76:

*I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.*

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

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

The panel concluded that Miss Mundi's misconduct engaged all of the four questions set out in the case of *Grant [2011] EWHC 927 (Admin)*.

- a. Miss Mundi has in the past and is liable in the future to act so as to put patients at unwarranted risk of harm. The conditions imposed upon her practice were put in place to protect patients. By disregarding them and working without supervision and in a clinical setting she was prohibited from working in could have adversely impacted on patients' safety.
- b. Miss Mundi has in the past and is liable in the future to bring the nursing profession into disrepute. The public would consider that breaching the conditions of her interim order and acting dishonestly as unacceptable conduct by a registered nurse.
- c. Miss Mundi has in the past breached and is liable in the future to breach one of the fundamental tenets of the nursing profession, namely integrity and honesty.
- d. Having regard to Miss Mundi's repeated and deliberate acts of dishonesty in the past and her lack of insight the panel concluded that Miss Mundi has in the past and is liable in the future to act dishonestly.

In reaching its decision the panel carefully considered all the evidence before it, including Miss Mundi's written submissions and her character reference. However, the panel found there was no evidence to demonstrate that Miss Mundi has understood the seriousness or the implications of her actions and behaviour, and the impact this had on the public and the nursing profession. There is also little evidence of any remediation or insight. Conversely, in her letter to the NMC dated 8 February 2016, Miss Mundi demonstrated an alarming lack of understanding of the seriousness of her actions and their potential impact on patients' safety and on public confidence in the profession by referring to her series of deliberate dishonest acts as "I have made a mistake".

Dishonesty by its very nature is not easily remediable and Miss Mundi has presented no evidence written or otherwise to demonstrate any acceptance, accountability,

understanding or proper reflection upon her actions. The panel was therefore of the view that if Miss Mundi was permitted to return to unrestricted practice, there would be a real risk of repetition of her dishonest behaviour and a risk she would act in disregard of the Regulator's requirements. Such disregard could put patients at a real risk of harm.

In the panel's judgment Miss Mundi's actions have raised serious concerns in respect of her attitude to the matters before this panel.

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

The panel bore in mind that its primary function is to protect patients and the wider public interest which includes maintaining confidence in the nursing profession and upholding proper standards and behaviour.

Having regard to the principles set out in *Grant*, the panel is in no doubt that confidence in the profession would be undermined if a finding of impairment were not made. The panel therefore determined a finding of impairment is also necessary on public interest grounds.

Having regard to all of the above, the panel is satisfied that Miss Mundi's fitness to practise is currently impaired by reason of her misconduct.

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## **Determination on sanction:**

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

Ms Hartley, on behalf of the NMC, invited the panel to carefully consider the Indicative Sanctions Guidance and all the evidence in this case prior to reaching a decision. Ms Hartley made no submissions as to which sanction in particular would be appropriate and submitted that this was a matter for the panel.

In reaching its decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. The panel 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 Indicative Sanctions Guidance 28 January 2016 (“ISG”) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

The panel considered the aggravating and mitigating factors in this case. It found the following to be aggravating factors:

- Miss Mundi’s misconduct involved a wilful disregard of an order imposed on her registration by the Regulator;
- Miss Mundi’s misconduct involved dishonesty over a sustained period of time and represented a serious departure from the standards of a registered nurse;
- Miss Mundi had concealed her dishonesty;

- Although there is no evidence that actual patient harm occurred, Miss Mundi put patients at a potential risk of harm by working without supervision and in a clinical setting she was prohibited from working in;
- Miss Mundi has demonstrated a persistent lack of insight into the seriousness of her misconduct;
- Miss Mundi has not shown any accountability or remorse for her misconduct;
- The panel has identified an attitudinal issue;

The panel found the following to be mitigating factors:

- Miss Mundi engaged with the Regulator in these proceedings, albeit to a very limited extent;
- Miss Mundi put forward one character reference;
- There is no evidence of any clinical issues arising during the time she worked as a nurse for the Home;

The panel considered each of the sanctions in ascending order.

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.

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the ISG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Miss Mundi's misconduct was not at the lower end of the spectrum and that a caution order would be wholly inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order. Further, such an order would not protect the public.

The panel next considered whether placing conditions of practice on Miss Mundi's registration would be a sufficient and appropriate response. A conditions of practice order is generally only appropriate where there is an identifiable area of a nurse's practice in need of assessment and/or retraining. Further, the panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account the ISG, in particular:

*63.8 It is possible to formulate conditions and to make provision as to how conditions will be monitored.*

The panel is of the view that given the nature of the charges and Miss Mundi's previous failure to comply with her interim conditions of practice order there are no practical or workable conditions that could be formulated. The panel was mindful that the misconduct identified in this case involves non-compliance with an interim order and dishonesty, and therefore cannot be addressed through retraining.

Furthermore the panel concluded that the placing of conditions on Miss Mundi's registration would not adequately address the seriousness of this case and would not protect the public nor satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. Paragraph 67 indicates that a suspension order would be appropriate where (but not limited to):

*67... the misconduct is not fundamentally incompatible with continuing to be a registered nurse or midwife in that the public interest can be satisfied by a less severe outcome than permanent removal from the register. This is more likely to be the case when some or all of the following factors are apparent (this list is not exhaustive):*

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

*67.3 No evidence of repetition of behaviour since the incident*

*67.4 The panel is satisfied that the nurse ... has insight and does not pose a significant risk of repeating behaviour.*

The panel also took account of the case of Parkinson v NMC in which Mr Justice Mitting stated:

*“A nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure.”*

The panel was of the view that Miss Mundi lacks insight and understanding of the seriousness of her actions and their implications on her patients, colleagues and the nursing profession. It was also of the view that she lacks remorse and therefore that there is a high risk of repetition of the misconduct.

The misconduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and breached fundamental tenets of the profession.

The panel has taken into account the limited mitigating factors. It was of the view that Miss Mundi's engagement with the Regulator was very limited. In relation to the

character reference, the panel noted that it was written for Miss Mundi's work as a support worker and that it did not state that the author had knowledge of these proceedings. Therefore, the panel gave this little weight.

Whilst, it is true that no problems with her clinical practice were reported by the Home, the matters addressed in this case do not relate to clinical practice. The panel takes the view that this cannot be seen to remediate her misconduct.

Balancing all of these factors, the panel has determined that a suspension order would not be an appropriate or proportionate sanction.

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

*70.1 Is striking-off the only sanction which will be sufficient to protect the public interest?*

*70.2 Is the seriousness of the case incompatible with ongoing registration?*

*70.3 Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?*

*71 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following ...*

*71.1 Serious departure from the relevant professional standards as set out in key standards, guidance and advice ...*

*71.6 Dishonesty, especially where persistent or covered up*

*71.7 Persistent lack of insight into seriousness of actions or consequences*

The panel has found that Miss Mundi behaved dishonestly towards her employers over a sustained period of time and demonstrated a blatant disregard of an interim order imposed by the NMC for protection of the public. Miss Mundi's actions were significant and serious departures from the standards expected of a registered nurse. There has been no evidence of insight, remorse or any recognition of the seriousness of this matter. Taking all the factors into account the panel has concluded that the misconduct and attitude demonstrated are fundamentally incompatible with her remaining on the register. The panel has also concluded that public confidence in the profession can only be maintained if Miss Mundi was removed from the register. In all the circumstances the panel was of the view that a striking off order is the only appropriate and proportionate order that would be sufficient to protect the public interest.

The panel considered that a striking-off order was 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.

The panel has taken into account that this order will prevent Miss Mundi from working as a registered nurse and, as a consequence, she may be caused financial hardship, (although the panel has no specific information about that matter). However, in applying the principle of proportionality, the panel determined that, in any event, the need to protect the public and the wider public interest outweighed Miss Mundi's interests in this regard.

The panel has therefore determined to impose a striking off order and directs the Registrar to strike Miss Mundi's name off the register.

## **Determination on Interim Order**

The panel has considered the submissions made by Ms Hartley that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. Ms Hartley advised the panel that a substantive order review will take place on 11 March 2016 in relation to a 6 months substantive order effective from 20 October 2015 imposed by a different panel of the NMC.

The panel accepted the advice of the legal assessor.

The legal assessor advised the panel that there did not appear to be any restriction, statutory or otherwise, for the panel to impose an interim order in this case, despite Miss Mundi being the subject of a current substantive suspension order.

The panel was satisfied that an interim suspension 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. This panel considers that there is an identified risk that if a panel considering the substantive order review on 11 March 2016 decided to revoke the order there could be a period of time where the public would not be protected. This is because the NMC would need to serve a notice in accordance with the Rules before a panel of the NMC could consider imposing a new interim order.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined.

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

That concludes this determination.