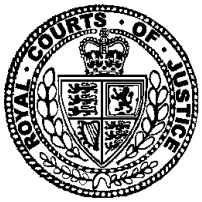

Neutral Citation Number: [2023] EWHC 1230 (Admin)

Case No: CO/4603/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/05/2023

Before :

THE HONOURABLE MRS JUSTICE THORNTON DBE

- -

Between :

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE (PSA)	**Appellant**
- and -	
(1) NURSING AND MIDWIFERY COUNCIL	
	Respondents
(2) PRIMROSE MATOVU NAMUSISI	

- -
- -

David Mitchell (instructed by **Browne Jacobson LLP**) for the **Appellant**
Hannah Smith (instructed by **Nursing and Midwifery Council**) for the **1st Respondent**
The **2nd Respondent** did not appear and was not represented.

Hearing dates: 3rd May 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 23rd May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

THE HONOURABLE MRS JUSTICE THORNTON DBE

The Hon. Mrs Justice Thornton :

Introduction

1. This is the appeal of the Professional Standards Authority for Health and Social Care ("the Authority"), in its role as the supervising regulator of the Nursing and Midwifery Council ("the Council"). The Authority brings the appeal, pursuant to s.29 of the National Health Service Reform and Healthcare Professions Act 2002, against a determination of a Fitness to Practise Committee of the Council ("the Panel"). The determination was given on the 30 September 2022 and suspended the registration of a nurse, Ms Namusisi ("the Nurse"), for a period of 12 months.

2. The essence of the Authority's appeal is that the sanction imposed by the Panel was insufficient to protect the public and the Nurse should have been struck off the register of nurses and midwives maintained by the Council. The Authority asks that the Court exercise the statutory power available to it and substitute the current sanction of a suspension order with an order removing the Nurse from the register (strike-off). Alternatively, the Court should remit the sanction to be considered by a fresh panel with such directions as the Court thinks fit.

3. The Council supports the appeal against the decision of its Panel. It concedes that the sanction imposed was not sufficient given the conduct in question and the Panel's findings.

4. The Nurse seeks to defend the sanction of suspension imposed by the Panel. A skeleton argument was filed on her behalf. At the start of the hearing, I was informed by the other parties, who were present in Court, that she had indicated she would not be attending Court or be represented before me. I was told that she had requested the Court determine the matter on the papers. I was pointed to correspondence in this regard between the parties which did not appear to have been copied to the Court. In the circumstances, I took the view that I should proceed by way of putting the contents of the Nurse's skeleton argument to the parties present in Court and thoroughly test their respective cases. In the event, Counsel for the Authority and for the Council each made submissions before me and answered my questions for just under 2 hours 45 minutes.

Summary of the factual background

The conduct and allegations

5. The allegations against the Nurse relate to her conduct whilst working on a night shift for Chelsea and Westminster Hospitals NHS Foundation Trust on 8th to 9th June 2019. She was tasked with caring for Patient A who suffered from Parkinson's Disease and had additional medical needs due to hospital-acquired pneumonia. He was considered to be highly vulnerable and had been placed in a side room with two nurses allocated to care for him.

6. The patient's grandson, a registered paramedic, arrived to visit his grandfather at 3am that night. On arrival, he found the door to the side room locked. Despite knocking repeatedly, there was no answer. He sought assistance from the sister in charge at the time. After several more minutes of knocking, the door was opened by the Nurse who then closed it again. When she re-opened the door a few minutes later, it appeared to

both witnesses that she had just woken up because of her appearance and because the room was in virtual darkness. Blankets were seen rolled into pillows and there were other blankets on the chairs which gave the impression that the Nurse had been sleeping on a makeshift bed.

7. When the light was turned on, Patient A was found to be unresponsive on the bed with his head lowered down below his legs, and his legs bent but elevated at a 45-degree angle. His head was against the headboard and touching the bedrails which were raised. He had mucus all over the right side of his face and was at a high risk of aspiration. His pyjama top was up under his armpits and the rest of his body was naked save for an incontinence pad. He was described as being "hypoxic and blue" with secretions covering his face. It took around two hours to stabilise him, clean him and make him comfortable.

8. The Nurse was charged with the following misconduct and consequent impairment of her fitness to practise:

1. failed to keep and maintain Patient A's safety;

2. failed to maintain constant observation within eyesight of Patient A;

3. fell asleep during her shift;

4. caused or permitted and/or failed to redress Patient A's predicament on his bed, namely;

(a) His head lowered down unsupported rather than sitting upright.

(b) The bed elevated at approximately 45 degrees with the legs elevated above head height.

(c) His pyjama top unbuttoned, his legs exposed, his body uncovered by a blanket.

(d) The development of secretions in his airways for which the Nurse should have sought help in suctioning.

5. exposed Patient A to the risk of aspiration;

6. agreed and/or permitted Patient A's door to be locked without any clinical reason;

7. when Patient A's grandson attended at 03:00 am on 9th June 2019, delayed in opening the door.

The hearing before the Panel

9. The hearing before the Panel commenced on 26th September 2022 and lasted five days. The Nurse admitted some, but not all, of the allegations and gave evidence. In her

evidence she stated that she had maintained constant observation of Patient A, that she did not fall asleep at any point during the shift, that Patient A was not at risk of aspiration, and that the secretions on his face were because Patient A had a coughing episode a few minutes before the witnesses entered the room. She maintained that the room was not in total darkness and that she was able to see Patient A throughout her shift. She further said that Patient A was wearing pyjamas and was covered by a blanket when the witnesses came in. In her oral evidence she insisted that Patient A's head was supported by a pillow and that Patient A's head was higher than his legs.

10. The Panel heard evidence from the grandson of Patient A, a registered paramedic, and the sister in charge at the time of the incident. On every point of dispute, the Panel preferred the evidence of the witnesses to that of the Nurse. All charges were found to be proved.

11. The Panel took matters in three distinct stages. Days 1 and 2 were spent hearing the evidence. Having deliberated, the Panel handed down its decision on the facts it found had been proved on the fourth day of the hearing. The Panel then moved on to consider whether those facts amounted to misconduct and, if so, whether the Nurse's fitness to practise was impaired. The Council and the Nurse supplied written submissions on impairment followed by brief oral submissions.

12. The Panel concluded that the Nurse's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct. The Panel was further satisfied that her fitness to practise was impaired. There is no challenge to these aspects of the decision.

13. The Panel handed down its findings on misconduct and impairment at 3:19pm on the fifth day (Friday). Having done so, the Panel accepted written submissions as to the appropriate sanction. For the Council, the suggested sanction was, as a minimum, suspension from the register for 6 – 8 months but it was said to be a matter for the Panel whether a more severe sanction was appropriate. On behalf of the Nurse, her advocate proposed no further action or a caution order or a conditions of practice order.

14. The Panel took legal advice from its legal assessor who explained the need to find a proportionate sanction which struck a fair balance between the Nurse and the overarching objective of public protection; the requirement to work from the 'bottom up' of the escalating scale of sanctions which culminate in striking off and the need to take into account aggravating and mitigating features.

The Panel's decision

15. The Panel's findings in relation to the impairment included as follows:

> *"your actions in sleeping on duty whilst caring for a vulnerable patient and, whilst doing so, deliberately placing his bed at a 45-degree angle so that his head was below his feet, leaving him uncovered and at risk of aspiration were deplorable, unprofessional, and put the profession into disrepute. It considered this behaviour to be wholly unacceptable.*
>
> *The panel determined that you selfishly placed your own interests over the needs of a highly vulnerable patient and your actions in rolling up blankets into pillows*

and setting up chairs into a makeshift bed, were deliberate and planned, leaving Patient A at a serious risk of severe harm as you placed him in a position that enabled you to sleep.

The panel finds that Patient A was put at risk of unwarranted physical and emotional harm as a result of your misconduct. It determined that your misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute.

Regarding insight, the panel considered that you have not appropriately demonstrated an understanding of how your actions put Patient A at a risk of harm. It determined that you had minimised the seriousness of your conduct, deflected blame onto others, demonstrated very limited insight, and taken little responsibility nor acknowledgement of the seriousness of risk.

The panel is of the view that there is a significant risk of repetition as you have not remediated your misconduct. The training you have completed only partially covers the issues and does not go to the heart of the charges found proved. There is also no evidence of you demonstrating the transfer of recent relevant training into your practice.

The panel determined that a finding of impairment on public interest grounds is required because an informed member of the public, aware of the charges found proved in this case, would be particularly horrified at the misconduct and breaches of the NMC code and standards. 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 your fitness to practise impaired on the grounds of public interest."

16. In its determination on sanction, the Panel referred to the need for careful regard to the relevant Council guidance on sanctions. It referred to the principle of proportionality. It took into account, as aggravating features, that Patient A was an elderly man with significant health issues and was very vulnerable; the Nurse's actions placed him at risk of harm and a near miss of serious injury or death; her actions amounted to an abuse of her position of trust; and she showed lack of insight into the failings. It identified as mitigation, that the incident occurred over a single shift.

17. The Panel adopted the 'bottom up' approach set out in the Guidance, assessing each of the potential sanctions on a sliding scale of seriousness. It rejected the possibility of taking no action or of imposing conditions on the Nurse's registration. During the course of its assessment in this regard, the Panel referred to having regard to the Council's guidance on seriousness of misconduct. Turning to consider suspension, the Panel referred to the Guidance on suspension and said as follows:

"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:

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

No evidence of repetition of behaviour;

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

The panel was satisfied that in the particular circumstances of this case, the misconduct was not fundamentally incompatible with remaining on the register."

18. Turning to consider a striking-off order the following was said:

"The panel did seriously consider a striking off order but determined that given that you have been working for three years without any regulatory concerns being raised, it would be disproportionate to impose a striking off order."

19. The Panel then returned to its consideration of suspension:

"It considered that the seriousness of the charges found proved require a temporary removal and a period of suspension will be proportionate and sufficient to protect the public. Whilst the panel did determine some attitudinal issues were present, there is no evidence before it to suggest that these may be deep seated. The panel also considered that although there is a lack of insight, given the fact that you have been working unrestricted for three years with no concerns there is a public interest in a Registered Nurse being given the opportunity to remediate their misconduct to return to safe practise.

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

……

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.

The panel determined that a suspension order for a period of 12 months with a review was appropriate in this case to mark the seriousness of the misconduct and the severity of harm to which Patient A was exposed."

The legal framework

The National Health Service Reform and Healthcare Professions Act 2002

20. The Authority oversees the regulation of health care professionals, including the Council (s.25 of the National Health Service Reform and Healthcare Professions Act 2002). It may refer disciplinary cases to the High Court if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public. Protecting the public encompasses the health and safety of the public; public confidence; and the maintenance of proper professional standards (s29(4A) and (5)(c)).

21. Where the Authority makes a referral "the case is to be treated by the court to which it has been referred as an appeal by the Authority against the relevant decision" (s.29(7)(a)). On hearing the appeal, the court may: dismiss the appeal; allow the appeal and quash the relevant decision; substitute for the relevant decision any other decision which could have been made by the committee or other person concerned; or remit the case to be disposed in accordance with the directions of the court (s29(8)).

The approach of the appeal court

22. The Court will allow the appeal where the decision of the Panel was (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings (CPR r52.21).

23. The Court will correct material errors of law and fact but will be cautious about upsetting conclusions of primary fact, particularly when they are dependent on an assessment of credibility of witnesses whom the Tribunal has had the advantage of seeing and hearing (Assicurazioni Generali SPA v Arab Insurance Group [2022] EWCA Civ 1642). In considering whether a penalty may be said to be wrong, the Court should afford respect to the judgement of the relevant regulatory body. There is limited scope for an appellate court to overturn an evaluative decision on sanction imposed by a specialist adjudicative body which usually has greater experience in the field in which it operates than the courts (Bawa-Garba v GMC [2018] EWCA Civ 1879 at §61 and 67).

24. A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (GMC v Jagivan [2017] EWHC 1247 (Admin) at §40viii). The protection of the public is one of the factors underlying the requirement to give reasons (Council for the Regulation of Healthcare professionals v General Dental Council and Ian Marshall [2006] EWHC 1870 (Admin) at §30). In the case of a serious procedural or other irregularity, there is a limit to the deference that the court might otherwise afford the decision of a regulator (Professional Standards Authority v Nursing and Midwifery Council & X [2018] EWHC 70 (Admin) at §47).

25. A profession's most valuable asset is its collective reputation and the confidence which that inspires. The reputation of the profession is more important than the fortunes of any individual member (Bolton v Law Society [1994] 1 WLR 512 at 518 H – 519 A and 519 E). The main purpose of a specialist panel such as the Panel in the present case is to maintain public confidence in the nursing profession (Professional Standards Authority for Health and Social Care v Onwughalu [2014] EWHC 2521 (Admin) at §27).

26. In a skeleton argument produced on behalf of the Nurse, the author pointed to caselaw emphasising the respect that should be afforded by the Appellate Court to the decision of a specialist Tribunal like the Panel (Raschid v General Medical Council [2007] EWCA Civ 46), and that the Court should be slow to interfere with specialist evaluation (Fouche v Nursing and Midwifery Council [2011] EWHC 133 (Admin)). These propositions are not in dispute. The skeleton also pointed to the proposition that there is no statutory requirement to give reasons and reasons need not be lengthy. Whilst Counsel for the Authority pointed out that the Nurse's skeleton selectively quoted, in this regard, from the judgment in Watson v GMC [2006] EWHC 18 (Admin), I am prepared to accept the proposition that reasons need not be lengthy, providing they are

adequate in the context of public protection (Selvanathan v General Medical Council [2001] Lloyd's Rep Med 1 at §7). The Nurse's skeleton also referred to paragraph 17 of Giele v GMC [2005] EWHC 2143, as authority for the proposition that the public interest may include the doctor's return to safe work. I note that paragraph 17 relied on refers to guidance then published by the GMC and not to a finding by the Court, I am however, prepared to accept that paragraph 29 of the judgment refers to the existence of a public interest in not ending the career of a competent doctor.

The Council's guidance

27. The Council's guidance on sanctions explains the need for a proportionate sanction, which finds a fair balance between the Nurse's rights and the overarching objective of public protection. In this context, Counsel for the Authority emphasised the following paragraph:

> *"[The Panel] need to explain why following the most serious sanction is not necessary as it would be going further than is needed to achieve public protection – simply saying it would be disproportionate isn't enough."*

28. The Guidance sets out a non-exhaustive list of aggravating and mitigating features. Guidance is provided on suspension and striking off.

29. The Council has also produced guidance on assessing the seriousness of misconduct which was referred to by the Panel, in which it is said that:

> *"A small number of concerns are so serious that it may be less easy for the nurse…to put right the conduct, the problems in their practice, or the aspect of their attitude which led to the incidents happening."*

30. The examples given include the following:

> *"Being directly responsible for exposing patients to harm or neglect, especially where the evidence shows the nurse putting their own priorities...before their professional duty to ensure patient safety and dignity."*

Grounds of appeal

31. The Authority advanced three grounds of appeal:

Ground 1: The Panel's decision was wrong, based on the facts it found.

Ground 2: In reaching its decision, the Panel materially misdirected itself in its treatment of the fact that the Nurse had worked for three years since the index incident without any regulatory concerns being raised and otherwise provided inadequate reasons.

Ground 3: The Panel materially misdirected itself in that whilst it properly directed itself to the Council's Sanctions Guidance on suspension orders, it did not have any or any adequate regard to the following factor included in the Guidance: "the Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour".

32. On discussion at the hearing, Counsel for the Authority agreed that grounds 2 and 3 advance, in essence, the same case, namely that the Panel misapplied the Guidance.

The Nurse's defence

33. In careful and helpful written submissions filed before the hearing, the following was said on behalf of the Nurse.

34. Procedural irregularity: The burden is on the Authority to establish, on the balance of probability, that there was procedural irregularity at the substantive hearing of September 2022 and there was none. The Panel went through the Fact stage, Misconduct stage and Impairment stage and, finally, Sanction stage. Having found the charges proved by way of admission and on evidence, the Panel rightly identified all the sections of the relevant code of professional standards breached and other areas which amounted to misconduct and the Nurse's fitness to practise was rightly impaired. The Panel rightly considered all evidence before it, including the demeanour of the witness and holistically assessed the evidence both at facts and impairment stages before arriving at the Suspension Order as sanction. The Panel reached a reasonable decision at each stage and gave reasons for them. There is no statutory requirement for the Panel to give reasons for their decision. It is a good practice to give reasons and they do not need to be lengthy. The Panel gave reasons and the reasons stated as misconduct and impairment are detailed enough and these were taken into account when the Panel were making their decision at sanction stage.

35. The Panel is best suited to determine the case including sanction not the Court: The issues raised in this case concern competence and skill where the Court lacks the detailed knowledge and expertise to determine the level of impairment and the appropriate sanction to meet the protection of the public and maintain the public confidence in the profession. The cases relied on by the Authority (which includes issues relating to sexual misconduct and dishonesty) where the Court has intervened in the sanction are distinguishable from the competence issues before this Court. It is often and rightly asserted, that issues of competence and skill can be easily remediated whilst issues of misbehaviour and attitude are not easily remediable. The Court cannot offer a fair and reasonable opinion on issues of clinical competence which are better judged by the Panel.

36. The Suspension Order is adequate and sufficient to protect the public whilst it ensures the Nurse remediates her failings: A Suspension Order is a severe restriction. The Registrant had rightly worked for three years post the incident without the Council receiving further allegations or referral. It is always in the interest of public to give a registrant who had erred an opportunity to remediate her misconduct and lack of competence which the imposed Suspension Order sought to achieve. It is also a public interest for the Nurse to return to a safe practice (Giele).

37. In the event the appeal is allowed, the position of the Nurse is said to be that the case should be remitted to a freshly constituted panel to consider the sanction without any reference or further order from the Court and who would not be made aware of the Court's intervention.

Discussion and conclusions

38. In assessing the decision reached by the Panel, I take as my starting point the proposition that the Court should afford respect to an evaluative decision as to the appropriate sanction for professional misconduct imposed by a specialist tribunal. This proposition was emphasised by the Nurse in her skeleton argument and is supported by caselaw (Bawa-Garba v GMC). However, caselaw also makes clear that the degree of deference will depend on the circumstances. It is a feature of this case that the Authority and Council jointly submit that the Panel's decision on sanction was inappropriate in the particular circumstances of this case. The question is whether I am also satisfied that it was (Professional Standards Authority for Health and Social Care v Onwughalu [2014] EWHC 2521 at §29).

39. The findings of the Panel in relation to the Nurse's misconduct and impairment to practice are expressed, in material part, in striking and stark terms. The Nurse's actions were found to have left the patient "at a serious risk of severe harm". Her actions were said to be "deplorable", "unprofessional", to "put the profession into disrepute" and to "be wholly unacceptable". She was found to have "selfishly placed your own interests over the needs of a highly vulnerable patient". Her actions were considered to be "deliberate and planned", her misconduct was said to have "breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute". There was said to be "very limited insight with little responsibility taken or the seriousness of risk acknowledged". A significant risk of repetition was identified. The Panel concluded that an informed member of the public, aware of the charges found proved in this case would be particularly "horrified" at the misconduct.

40. In its determination on the appropriate sanction, the Panel directed itself to the need to pay "very careful regard" to the Guidance on sanctions. The Guidance provides that removal from the register is likely to be appropriate where the conduct of the nurse is fundamentally incompatible with being a registered professional. Key considerations for a panel in this regard are said to be whether the regulatory concerns raise fundamental questions about professionalism; whether public confidence can be maintained if a nurse is not removed from the register and whether striking off is the only sanction sufficient to protect patients or maintain professional standards. In addition, other guidance directs a panel to assess the seriousness of the misconduct, setting out a "small number of concerns" where it may not be possible for the nurse to remedy the conduct in question or their attitude. The examples given includes the misconduct in play here, namely, "being directly responsible for exposing patients to harm or neglect, especially where the evidence shows the nurse putting their own priorities before their professional duty to ensure patient safety and dignity".

41. It is apparent that the findings of the Panel in relation to impairment are apposite to the Guidance on striking off. What was relevant to impairment was equally relevant to sanction. Yet all the Panel said in relation to striking the nurse from the nursing register was that it would be disproportionate to do so on the basis that she had been working without regulatory concerns for three years since the incident in question. This finding appears wholly inconsistent with the Panel's findings in relation to impairment that the Nurse had "very limited insight" and there was a significant risk of repetition of the misconduct. The apparent inconsistency is not explained, and the Panel's reasoning is too generalised in the circumstances.

42. Counsel for the Authority submitted that the Nurse demonstrated abrasive and defiant behaviour at the hearing before the Panel. He submitted that it was noteworthy that she

advanced evidence that directly contradicted the evidence of two medical professionals (the nurse in charge and a registered paramedic). He took me through the transcript and identified relevant parts in this regard. In my view, the Nurse was entitled to put forward her case and should not be penalised for having done so. Nonetheless, Counsel for the Council pointed out that the Nurse had had the opportunity to make submissions to the Panel after the findings of misconduct/impairment, at the point of the Panel's consideration of an appropriate sanction. No submissions were made at that point which might be said to demonstrate developing insight on the part of the Nurse. I accept that the apparent continuing lack of insight on the part of the Nurse is a striking feature of the case which makes the Panel's reliance on their being no subsequent regulatory concerns perplexing and unexplained.

43. More broadly, the Panel's findings in relation to impairment do not carry through into the assessment of the sanction, with the result, in my view, being that the Panel failed to grapple with the seriousness of the incident itself, beyond listing the several aggravating features without then adequately engaging with them. Despite referring to the guidance on seriousness of misconduct, the Panel did not engage with the proposition that the misconduct in play in the present case may be less easy to put right when considering suspension/strike-off. The outcome was that disproportionate weight was afforded by the Panel to the fact that the misconduct took place in a single incident and there had been no regulatory concerns since.

44. Accordingly, I uphold the Authority's appeal on the grounds that the Panel misapplied the relevant guidance and its decision on sanction was wrong on the basis of its findings in relation to the Nurse's misconduct/impairment.

Strike-off from the register

45. I have upheld the Authority's grounds of appeal and it follows that the Panel's decision on sanction must be quashed.

46. Under s 29(8) of the 2002 Act, I may substitute for the relevant decision any other decision which could have been made by the Panel or remit the question of an appropriate sanction for further consideration. Where the Court has found an irregularity in the proceedings before a panel, it may be unable to decide whether the penalty was appropriate or not and can, in these circumstances, remit the case to the Panel with directions as to how to proceed **(**Ruscillo v Council for the Regulation of Healthcare Professionals & Others [2005] 1 WLR at §72). Substitution of a sanction by the Court is appropriate only where the outcome is so clear that there would be no point in remission (Collins J in Giele at §33).

47. Having reflected carefully on the submissions by the Authority and the Council, I conclude that this case falls into "the somewhat rare category of case where I am able to safely conclude" (GMC v Stone [2017] EWHC 2534 at §66), that the Nurse must be erased from the register.

48. The Panel's findings on the Nurse's misconduct are striking and stark. Her conduct was found to have put a vulnerable patient at risk of severe harm. Her actions were said to be deliberate, planned, wholly unacceptable and selfish. The Nurse was found to have very limited insight. The Panel considered there is a serious risk of repetition. The

Council's guidance lists the conduct in play in this case as an example of conduct where it may be more difficult to put the conduct or the attitude underlying the conduct right.

49. In coming to my view on sanction, I reject the submission advanced in the skeleton argument of the Nurse that this is a case about competence and skill which a Court is less able to evaluate than a specialist Panel. As the Panel made clear in its findings on impairment, the conduct in this case is shocking for its deliberate, planned, selfishness and the total disregard for a highly vulnerable patient placed at serious risk of harm.

50. The Panel found that a member of the public would be particularly horrified by the conduct. I take into account that the fundamental purpose of a sanction imposed by a regulator is to maintain the reputation of the profession and that the reputation of the profession is more important than the fortunes of any individual member (Bolton v Law Society).

51. I take into account that the Council and the Authority are both in agreement that the only proper sanction is one of erasure from the register. The Council is the specialist regulator and the Authority has supervisory oversight over the conduct of a wide array of healthcare professionals. By corollary with the reasoning in Bawa-Garba v GMC, I consider that I should afford respect to their professional evaluations whilst continuing to ensure that I too am satisfied with their view, which I am.

52. In coming to my view, I have also borne in mind that the Council itself initially identified suspension (not strike-off) as the appropriate punishment (in its notice of hearing). In written submissions on sanction submitted to the Panel after the finding of impairment, the Council modified its stance in this regard to suggest suspension was the minimum punishment and strike-off was a matter for the Panel. I raised a concern with the two regulators at the start of the hearing that the effect was that the Nurse had not had an adequate opportunity to make submissions on strike-off before the Panel or before this Court given she was not present or represented before me. Having explored my concerns with both Counsel at some length, I am satisfied that it is made clear to a registrant (and was confirmed to the Nurse by the legal assessor during the hearing) that sanction is a matter for the Panel (not the Council) and that all sanction options were on the table. The Nurse had the opportunity to address the Panel on all options including strike-off before the Panel came to their view, an opportunity which she did not take up. Nor has the Nurse taken the opportunity to attend before me today to make submissions in relation to strike-off.

Conclusion

53. For the reasons set out above, I uphold the appeal of the Authority and substitute an order for strike-off.