

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

**Substantive Hearing
Tuesday 21 February – Friday 24 February 2023
Monday 19 August 2024 – Friday 23 August 2024**

Virtual Hearing

Name of Registrant: Lesley Bell

NMC PIN: 16H0131E

Part(s) of the register: Registered Nurse – Sub Part 1 RNA
Adult Nursing – September 2017

Relevant Location: Leeds

Type of case: Misconduct

Panel members: Rachel Cook (Chair, lay member)
Georgina Witherow (Registrant member)
James Hurden (Lay member)

Legal Assessor: Graeme Dalglish

Hearings Coordinator: Rene Aktar
Catherine Blake (19 August 2024)
Eyram Anka (20 August 2024)

Nursing and Midwifery Council: Represented by Lucy Chapman, Case
Presenter (21 February – Friday 24
February 2023)
Giedrius Kabasinskas, Case Presenter (19
– 23 August 2024)

Mrs Bell: Present and not represented at the hearing
(21- 24 February 2023)
Present and not represented (19 – 20
August 2024)
Not present and not represented at the
hearing (20– 23 August 2024)

Facts proved: All charges

Facts not proved: N/A

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Charges

That you, a Registered Nurse:

- 1) At a meeting on 3 October 2018, provided / submitted an inaccurate statement in support of a work transfer;*
- 2) Sent, or caused to be sent, e-mails stating that Colleague A had provided the statement referred to in charge 1 above on / containing, the following dates:*
 - a) 10 October 2018;*
 - b) 12 October 2018;*
- 3) Sent, or caused to be sent, an e-mail to Colleague A dated 16 October 2018 requesting that Colleague A say that she had written a statement a referred to in charge 1 above;*
- 4) Your conduct at any and / or all of charges 1- 3 above was dishonest in that you:*
 - a) Knew that the statement was inaccurate and / or had not been provided by Colleague A;*
 - b) Intended to create the misleading impression that the statement had been provided by Colleague A*

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

Background

Mrs Bell joined the NMC register in September 2017 and commenced work at the Hospital, working in the Accident and Emergency (A&E) department at St James' Hospital (St James). It is alleged that she was unhappy at St James' Hospital, and so

she discussed the possibility of moving to the A&E department at Leeds General Infirmary (LGI). It is alleged that in order to support her application for transfer, Mrs Bell asked a colleague, Witness 3, if she would support her by writing a reference. It is alleged that Witness 3 agreed and asked Mrs Bell to let her know when she needed it.

Mrs Bell met with her line manager, Witness 1, on 3 October 2018. During that meeting it is alleged that she provided her line manager with three statements to support her move. One was from her husband and two others were at that time anonymous. Mrs Bell's line manager, Witness 1, asked Mrs Bell to identify the authors of the statements. Mrs Bell told Witness 1 in an email dated 12 October 2018, that the authors of the two statements were Witness 3 and another nurse.

Mrs Bell allegedly told Witness 1 that she would have to get the authors' consent before she could disclose their names. Mrs Bell emailed Witness 1 on 10 October 2018 and provided three names, including Witness 3. Witness 1 requested clarification and on 12 October 2018 Mrs Bell emailed Witness 1 to confirm two of the names, one being Witness 3.

On 16 October 2018, Mrs Bell emailed Witness 3. In that email she said, "*...please find attached copies of 2 statements. One is from [PRIVATE] (which she wrote) & the other (statement 2) I was hoping you would say you write it please. I'm desperate to get out of there for my own sanity as I don't feel I can go on anymore...*"

At a meeting with Witness 1 on 31 October 2018, Mrs Bell allegedly stated that Witness 3 had written the statement.

By email dated 18 October 2018 and at a meeting on 27 November 2018, Witness 3 denied ever writing the statement. St James' Hospital undertook a disciplinary investigation, and a disciplinary hearing took place on 28 January 2019.

The panel heard live evidence from the following three witnesses for the NMC:

- Witness 1: Deputy Head of Nursing at St James Hospital
- Witness 2: Deputy Head of Nursing at Leeds Teaching Hospital
- Witness 3: Staff Nurse at LGI

Witness 4, a Senior HR manager at Leeds Teaching Hospital, did not attend and her witness statement was admitted as hearsay evidence.

Preliminary

Decision and reasons on hearing in private

The hearing commenced on 22 February 2023. At the outset of the hearing on 22 February 2023, Ms Chapman for the NMC applied under Rule 19 to conduct the hearing in private [PRIVATE].

[PRIVATE].

Service and Proceeding in Absence

The panel was satisfied as to service and Ms Chapman applied to proceed in the absence of Mrs Bell. During Ms Chapman's submissions an email was received from Mrs Bell. Mrs Bell then joined the link and at 11:16am and attended the hearing supported by her husband. Mrs Bell was sent the bundles for the hearing which she said had not received.

The panel then heard live evidence from Witnesses 1, 2, and 3. Mrs Bell, with the support of the legal assessor, cross examined all three witnesses and put her case to each of them.

The hearing adjourned part heard to 25 September 2023.

19 August 2024 reconvened hearing

At the start of the reconvened hearing, the panel had the following papers:

- NMC bundle – 746 pages
- Registrants' bundle – 82 pages.
- Transcript bundle (from 21 to 25 February 2023) – 125 pages
- Bundle of papers relating to a hearsay application for NMC Witness 4
- Two sets of on tables (in relation to Mrs Bell's adjournment application)

Decision and reasons on hearing the application to adjourn in private

At the outset of the reconvened hearing on 19 August 2024, the panel noted that Mr McCaffrey, the Barrister you have instructed, had submitted documentation informing the panel that he was not able to attend the hearing to represent you this week. He has submitted written representations requesting an adjournment of the hearing but was not present.

[PRIVATE], the panel decided to hear the application for adjournment entirely in private in order to protect your privacy.

Decision and reasons on whether to hear the application to adjourn without your representative present

The panel decided to hear your application for adjournment. The panel noted that you did not want to make the application for adjournment without your representative present.

Mr Kabasinkas, on behalf of the Nursing and Midwifery Council (NMC), submitted that the panel ought to hear submissions on this issue. He submitted that, as Mr McCaffrey has informed the NMC that the reason for the application is that Mr

McCaffrey is not able to attend this week, it is unlikely he would be able to make the application in person. Mr Kabasinkas invited the panel to proceed in the absence of Mr McCaffrey, submitting that further delay was not in the public interest.

The panel broke at 12:30 until 14:15 to allow time for you to contact Mr McCaffrey over the lunch break and to ascertain his availability to appear before the panel to make the application for an adjournment in person, The panel were advised shortly after 14:15 that you had not received a substantive response from Mr McCaffrey other than being informed that Mr McCaffrey was unavailable.

The panel had before it detailed written submissions from Mr McCaffrey seeking adjournment, as well as a 60-page bundle and emails between the NMC and Mr McCaffrey regarding this hearing. The panel has also heard from you. The panel did not consider that in the circumstances that your application for an adjournment should not proceed today because of the absence of Mr McCaffrey. The panel was told that Mr McCaffrey was unable to attend at any time this week and delaying the hearing of this application to allow for his attendance will inevitably result in the loss of all of the hearing dates this week. The panel had sight of an email from your representative to the NMC dated 15 August 2024 which stated: "*We are not available to attend next week as both myself and [Person 1] are engaged in hearings at the MPTS.*"

In all the circumstances, the panel decided it was fair and appropriate to hear the application to adjourn in the absence of your representative.

Submissions on application to adjourn

The panel accepted the written detailed submissions by your representative, Mr McCaffrey, and noted that he was unable to attend in person. You confirmed that you had no additional points to make. [PRIVATE].

Mr Kabasinkas opposed the application, and he invited the panel not to adjourn the hearing. [PRIVATE].

Mr Kabasinkas reminded the panel that in their decision to adjourn a hearing they must consider the following factors:

- Whether there is public interest in the expeditious disposal of the case;
- Potential inconvenience to any witness warned; and
- Fairness to the registrant.

Mr Kabasinkas provided an overview of the history of this case and noted that it has already been significantly delayed by several previous adjournments. He submitted as follows:

- On 2 April 2020 an extension of time was given to Mrs Bell to return the Case Management Form
- The final hearing listed for July 2021 was adjourned as Mrs Bell's RCN Solicitor was not available, and the hearing was relisted for 8 – 11 November 2021
- On 15 October 2021 Mrs Bell contacted the NMC to inform them that the RCN withdrew from representing her. Mrs Bell requested an adjournment for legal representation to be obtained
- That adjournment was agreed on the 27 October 2021 by the NMC with no further representations.
- On 31 January 2022 the NMC relisted the hearing to begin 21 June 2022. The case officer noted on the email to Mrs Bell: *"I did request dates to avoid but you have not responded to me despite several requests"*
- On the 2 February 2022 Mrs Bell requested the date listed for June 2022 be relisted in September 2022 citing that [PRIVATE].
- The case was adjourned and relisted for August 2022. On the first day of that hearing it emerged that Mrs Bell had not been provided with the case papers

by the RCN. This added additional delays to the commencement of the hearing.

- On 8 September 2023 an email was received [PRIVATE].
- This adjournment was agreed by the Chair of the panel and the hearing was relisted to commence 22 July 2024.

Mr Kabasinkas referred the panel to the guidance on adjournment in a number of cases, these included:

- *GMC v Adeogba* [2016] EWCA Civ 162
- *Maitland-Hudson v Solicitors Regulation Authority* [2019] EWHC 67 admin
- *The Governor and Company of Bank of Ireland v Jaffrey* [2012] EWHC 734
- *Gatawa v NMC* [2013] EWHC 3435 admin
- *Ogunlola v NMC* [2016] EWHC 2919 admin
- *GMC v Hayat* [2018] EWCA Civ 2796
- *Vaidya v GMC* [2007] EWHC 1497 admin
- *Oyesanya v GMC* [2017] EWHC 409 admin
- *Ramaswamy v GMC* [2021] EHC 1619 admin

Mr Kabasinkas submitted that several adjournments had already been granted at your request. [PRIVATE].

Mr Kabasinkas submitted that Mr McCaffrey had been advised by email from the NMC on 3 July 2024 that this hearing was taking place this week and he was also provided with full case papers by the NMC. Notice of this hearing was served on you on 6 June 2024. He submitted that Mr Caffrey was not instructed only last week, and he submitted that Mr McCaffrey has had time to prepare. Mr McCaffrey now states that he is not available all of this week and so he could not, in any event, attend at any point to address the panel on this application, or conduct the hearing.

Mr Kabasinkas referred to the overarching objectives of the NMC and the need to protect the public and the wider public interest and he submitted it was important to make progress. He submitted that, if the matter was adjourned, it was unlikely that it would conclude by the end of this year. On this basis, Mr Kabasinkas submitted a further period of adjournment would not be fair or expeditious and would fail to meet the public interest. Further, Mr Kabasinkas submitted that a further adjournment would inconvenience the witness still to be heard. He reminded the panel that the alleged incidents took place in 2018, now almost six years ago, and there was a need to proceed without further delay.

The panel heard and accepted the advice of the legal assessor. He referred the panel to Rule 32 of the NMC Fitness to Practise Rules, the NMC Guidance on postponement and adjournment and the guidance on evidence where health is a reason for adjournment. He also referred to the guidance in *CPS v Picton* [2006] EWHC 1108 (Admin). He referred to the factors in that case including the need for expedition, the public interest, the reasons for adjournment, the likely consequences of adjournment, whether you can present your defence, the history of the case and whether there have been earlier adjournments, and the importance of doing justice between the parties in the circumstances of the case.

Decision and reasons on application to adjourn

The panel decided not to adjourn the hearing.

When making this decision, the panel took into account the detailed written submissions from Mr McCaffrey, and submissions from Mr Kabasinkas.

On the morning of 20 August 2024, the panel received an email from Mr McCaffrey, your representative which the panel took into account and have set it out in full below:

“Good evening Lesley, I write further to our conference this evening. If what you have recounted is accurate and you have properly understood events, I am gravely concerned by what has taken place. The interpretation of Rule 32

is not correct, I am concerned the Panel do not fully understand my position as direct access counsel (and the limits this places on me) and the fact that I am not instructed for the FtP hearing but rather to seek, on your instructions, an application to adjourn them and to represent you if adjourned. If the application is not successful then clearly you will not be able to instruct me to represent you. You always knew this. I am also concerned that there has been some suggestion as to unprofessional conduct on my part extending to an assertion that I have purposefully absented myself. I find this concerning and offensive. I have considered carefully whether to write a further document but I do not want this to be seen as a further discourtesy or create further confusion in case you have misunderstood what is taking place. As you know, I am engaged at the MPTS however the GMC are making their submissions at 9.30am with mine to follow immediately thereafter. There will be brief legal advice and I expect (but obviously cannot guarantee) I could be done by midday or half past as my Tribunal will then proceed to private deliberations. From experience, I do not anticipate they will return until later on Wednesday. On that basis, I can ask them to excuse me to a period of time (and get the permission of my client in this matter for the same) to attend your hearing and address the issues raised today. If the Panel would find this of use then obviously I will do so. Clearly, if a decision is made by the time you resume tomorrow there may be little point. As you know I will try and answer your e-mail or text as best I can but have to prioritise the hearing I am in and the client I am representing. I am keen however to dispel any impression given by this application, your engagement with me or indeed my inability to attend. I will leave it in your hands. Kind Regards,"

You made your application to adjourn on two bases: firstly, [PRIVATE], and secondly, because on the unavailability of your legal representative.

[PRIVATE].

Unavailability of your legal representative

The panel had sight of an email dated 3 July 2024 from the NMC to your legal representative. It stated as follows:

“Dear Stephen

Please find attached (via the blue link) the documentation in relation to Mrs Bell’s case of 071132 which was last heard in February 2023.

It has been scheduled to resume on 19 August 2024. The documents include the final bundles (WS statements and exhibits) Reg response bundle, The Transcript bundle and schedule of charge.

Kind regards”

The panel noted the date of this email to your legal representative was 3 July 2024, and it further noted that this was sent approximately six weeks before the date of the reconvened hearing - 19 August 2024. In addition, the panel noted that the date that the hearing was due to reconvene was made known to your legal representative as the date of 19 August 2024 is explicitly stated within the above email.

The panel carefully read and took into account the detailed written legal representations of 33 paragraphs.

As stated, at approximately 12.30 on 19 August 2024, the panel adjourned the hearing for an extended lunch break, until 2.15pm. This was to enable you to contact your legal representative to ascertain their current availability. Shortly after 2.15pm you informed the panel that you had sent your representative both a text message and an email but had not received a substance response to either. You had received a text message which stated that your representative was ‘*in proceedings*’. You were referred to the written legal representations which, at the end, referenced two names. You explained that you had not had any contact at all with the second name. You were unaware if your representative had a clerk. You indicated that you felt that you had done all that you could to make contact with your legal representative. The panel agreed.

During the hearing, you were given an opportunity to add, orally, to the written submissions from your representative. You stated that you had nothing further to say.

The panel took into account number of adjournments and postponements in this matter. The panel concluded that there had been three previous successful adjournment applications by you of the final hearing. It is understood that the dates and reasons for these are as follows:

1. Final hearing listed 8 – 11 November 2021. The final hearing listed for July 2021 was adjourned as Mrs Bell's RCN Solicitor was not available, and the hearing was relisted for 8 – 11th November 2021. On 15 October 2021 Mrs Bell contacted the NMC to inform them that the RCN had withdrawn from representing her. Mrs Bell requested an adjournment for legal representation to be obtained. That adjournment was agreed on 27 October 2021 by the NMC.
2. Final hearing listed August 2022. On 31 January 2022 the NMC relisted the hearing to begin 21 June 2022. The case officer noted on the email to Mrs Bell: *"I did request dates to avoid but you have not responded to me despite several requests"*. On 2 February 2022 Mrs Bell requested the date listed for June 2022 be relisted in September 2022, [PRIVATE]. The case was relisted in August 2022. On the first day of that hearing it emerged that Mrs Bell had not been provided with the case papers by the RCN and the hearing was therefore adjourned.
3. Reconvened final hearing listed 25 to 29 September 2023. On 8 September 2023 an email was received from Mrs Bell's husband [PRIVATE]. This adjournment was agreed by the Chair of the panel and the hearing was relisted to commence 22 July 2024 (subsequently altered to commence 19 August 2024 until 24 August 2024)

The panel noted that the last adjournment in September 2023 was for nearly a year, at your request. The panel is concerned that these charges date back to 2018;

nearly six years ago and that the final hearing of this matter has been adjourned on three occasions since 2021.

The panel considered there to be a strong public interest in disposing of this case without further delay. The panel noted that you represented yourself in February 2023, with appropriate support and guidance from the independent legal assessor. You participated in the hearing, and you cross examined three of the four NMC witnesses and were able to put your case to them. The panel was willing to facilitate similar guidance and support, including regular breaks to enable your attendance with the support of your husband. The panel was satisfied that you would be able to present your defence with that support.

In all these circumstances the panel decided not to grant your application for an adjournment. It took account of the guidance and the factors in the case law, including those in the *Picton* case. It took account of the NMC guidance and the following matters:

- [PRIVATE].
- You have made three previous successful applications for an adjournment.
- Your legal representative was aware of this date of this reconvened hearing (19 August 2024) and has been in receipt of the papers since 3 July 2024.
- The information presented to the panel was that your legal representative was unavailable for 19 August 2024 and may be available for the afternoon of Tuesday 20 August 2024. The panel was mindful that this reconvened hearing is listed for five days and it needs to be concluded. The panel had been 'stood down' for an extended period on Monday 19 August 2024 and did not consider it fair or proportionate for there to be further delay and loss of hearing days.
- The consequences of adjournment would be likely be a further considerable delay in hearing this case which was first to be heard in 2021 regarding events in 2018.

- There is a public interest in considering fitness to practise allegations swiftly and expeditiously, in order to protect the public, and to maintain public confidence in the professions and the regulator.

Decision and reasons on proceeding in the absence of Mrs Bell

At approximately 11am on Tuesday 20 August 2024, Mrs Bell turned off her camera and left the hearing. She was sent an email by the Hearings Officer advising that the panel would reconvene at 12:30 and it invited her to attend at that time. She was advised in that email that should she not attend at 12:30 the panel would be required to consider whether or not to proceed in her absence. The Hearings Officer followed up this email with unsuccessful attempts to speak to Mrs Bell on the telephone.

At 12:19 the panel received an email from Mrs Bell's husband advising that Mrs Bell would not be attending the hearing.

Accordingly, the panel next considered whether it should proceed in the absence of Mrs Bell. It had regard to Rule 21, and it heard the submissions of Mr Kabasinkas who invited the panel to continue in the absence of Mrs Bell.

Mr Kabasinkas referred the principle in *GMC v Adeogba* [2016] EWCA Civ 162 that a panel can decide not to proceed in the absence of a registrant only if there is a compelling reason to do. Whilst fairness to the registrant is a prime consideration, it must be balanced with fairness to the regulator, the interests of the public and the need to protect the public.

Mr Kabasinkas submitted that there has already been an application for an adjournment which was unsuccessful, after which Mrs Bell absented herself. Mr Kabasinkas referred the panel to the principles established in the relevant authorities of *Nabili v GMC* [2018] EWHC 3331 (Admin) and *GMC v Hayat* [2018] EWCA Civ 2796.

Mr Kabasinkas submitted that the case law indicates that there should be a compelling reason for a panel not to proceed in the absence of a registrant.

[PRIVATE]. It was his submission that it would be counterproductive to the statutory objectives of the regulator if Mrs Bell was able to halt the proceedings by choosing to absent herself in the middle of proceedings.

Having regard to all the circumstances and the background of the case, Mr Kabasinkas submitted that there is no good reason why this matter should not proceed. He therefore invited the panel to proceed in Mrs Bell's absence.

The panel accepted the advice of the legal assessor who referred to the guidance in *Adeogba v GMC* [2016] EWCA Civ 162. The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21.

The panel decided to proceed in the absence of Mrs Bell.

In reaching this decision, the panel has considered the submissions of Mr Kabasinkas, the email sent on Mrs Bell's behalf, and the advice of the legal assessor. It had particular regard to the factors set out in *Adeogba* and had regard to the overall interests of justice and fairness to all parties.

The panel noted that the email sent to Mrs Bell at 11:39 asking her to attend at 12:30 was replied to by Mr Bell at 12:19 stating:

[PRIVATE].

The panel decided that there is a public interest in the expeditious disposal of this case and that Mrs Bell has voluntarily absented herself from this hearing. The panel has already noted above that [PRIVATE] does not comply with NMC Guidance and case law. The panel was mindful that the charges relate to events that occurred in 2018.

There will be some disadvantage to Mrs Bell in proceeding in her absence. With regard to the documentary evidence in this case, the panel had regard to the transcript of this hearing on Wednesday 22 February 2023, Page 30, Section A:

THE CHAIR: ...Mrs Bell, do you now feel you have got all the paperwork?

THE REGISTRANT: Yes, thank you. [Hearings Coordinator] sent us through bundles. We have managed to print them off...

The panel was satisfied that Mrs Bell had access to and copies of all relevant statements and documentary exhibits in this case. She was present at the first week of the final hearing in February 2023 when she cross examined three of the four NMC witnesses. She will not be able to challenge the evidence of the final NMC witness and she will not give evidence on her own behalf. This can be mitigated, and the panel can make allowance for the fact that the evidence of the fourth NMC witness will not be tested by cross-examination. (There was a subsequent hearsay application relating to this fourth witness application). The panel will, when assessing all of the evidence, explore any inconsistencies in the evidence. Furthermore, any disadvantage is the consequence of Mrs Bell's decision to absent herself from this part of the hearing and waive her right to attend.

Taking account of the email from Mr Bell on behalf of Mrs Bell, the extensive history of this case, including the significant delays that have occurred, the panel decided that it was fair, appropriate and proportionate to proceed in the absence of Mrs Bell. The panel will draw no adverse inference from Mrs Bell's absence in its findings of fact.

Having made this decision, the hearings coordinator (at the request of the panel), sent Mrs Bell an email stating that she could rejoin the hearing at any stage.

Decision and reasons on application to admit hearsay evidence of Witness 4

The panel heard an application made by Mr Kabasinkas under Rule 31 to admit the hearsay evidence of Witness 4.

Mr Kabasinkas drew the panel's attention to the NMC guidance on Evidence and referred to the case of *R (Bonhoeffer) v GMC* [2011] EWHC 1585 (Admin), which explains that the inability to cross-examine the maker of the statement does not make proceedings unfair. Mr Kabasinkas asked the panel to consider the principles

of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin) when making its decision on the admissibility of Witness 4's hearsay evidence. He submitted that the Fitness to Practise rules require a panel to consider the issue of fairness and relevance before admitting the evidence.

Mr Kabasinkas submitted that Witness 4's evidence is demonstrably reliable because it reflects what the panel has heard from three other witnesses, and it reflects their position. It was his submission that Mrs Bell admitted some evidence that in a way corroborates Witness 4's statements. He referred to a statement from Mrs Bell's husband which states:

'I scanned the document, as any document that I scan it saves as a PDF version. I saved the document as a pdf file under statement 2 as I was unsure how my wife LB wanted this save the document as I was aware that my wife LB has other references. I then converted the pdf as a Word document using website www.adobe.com.'

Mr Kabasinkas submitted that the above statement corresponds with Witness 4's statement. It was his submission that Witness 4's evidence is not the sole and decisive evidence in relation to the charges against Mrs Bell. His submission was that Witness 4's evidence speaks to a discreet issue and the consequences of events and corresponds with other live evidence.

In addressing the nature and extent of challenge to the contents of Witness 4's statements, Mr Kabasinkas referred the panel to a bundle provided by Mrs Bell's former representatives at the Royal College of Nursing (RCN) in which there is suggestion of a challenge but no explanation as to what the specific issue was with Witness 4's statement. Further, Mr Kabasinkas submitted that there is no evidence before the panel to suggest that the allegations against Mrs Bell are fabricated.

Mr Kabasinkas told the panel that Mrs Bell is facing serious allegations, several of which relate to dishonesty. He submitted that if the panel finds those charges proved, the NMC will be applying for a severe sanction.

Witness 4 had not attended today. Mr Kabasinskas referred the panel to the evidence of notices sent to Witness 4. He told the panel that she had earlier been engaging but given the numerous adjournments, the NMC no longer had her current contact details. Mr Kabasinskas submitted that there is evidence before the panel demonstrating that the NMC had tried their best to obtain contact details from her former employers, but it had been unsuccessful. It was his submission that the NMC has taken all reasonable steps to secure Witness 4's attendance.

In the preparation of this hearing, the NMC had provided Ms Bell with Witness 4's witness statement. Mr Kabasinskas told the panel that when it became apparent yesterday, 19 August 2024, that Witness 4's attendance could not be secured, he notified Mrs Bell and the panel. Despite knowledge of the nature of the Witness 4's evidence, Mrs Bell had made the decision to disengage with this hearing. Mr Kabasinskas submitted that Witness 4's evidence was relevant and there would be no unfairness to Mrs Bell in admitting Witness 4's evidence.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included reference to Rule 31 which provides that, so far as it is '*fair and relevant*', a panel may accept evidence whether or not it is admissible in civil proceedings. He referred the panel to the guidance in *Thorneycroft*.

The panel was mindful that these are serious charges. The panel was satisfied that there was clear and cogent evidence showing that the NMC has made reasonable efforts to secure Witness 4's attendance, but those efforts have failed. Mrs Bell was aware of the evidence from Witness 4 and on 19 August 2024, in the presence of Mrs Bell, Mr Kabasinskas suggested that the NMC may make a hearsay application.

The panel had regard to Witness 4's witness statement exhibiting the contemporaneous screen shots of word document properties. It took the view that it had been tested in the examination of the three live witnesses in February 2023. The panel has already heard live evidence from the three main witnesses of fact, whom Mrs Bell cross examined and to whom she put her case.

The panel regarded Witness 4's evidence as relevant, contextual information. She is not a witness directly to the facts and the panel considered that Witness 4's evidence was not the sole and decisive evidence in relation to the allegation.

In these circumstances, the panel decided that it would be fair and relevant to admit into evidence the hearsay evidence of Witness 4, and it will decide when assessing all the evidence what weight, if any, to attach to it.

NMC Submissions on the fact

The panel heard extensive and detailed submissions from Mr Kabasinkas who referred in detail to the evidence of the NMC witnesses, and the position, so far as is clear, of Mrs Bell. He referred the panel to the relevant law and submitted that the NMC had discharged the burden of proof and had proved all of the allegations on the balance of probabilities. He reminded the panel that Mrs Bell need prove nothing. On dishonesty he referred the panel to the guidance in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.

The legal assessor reminded the panel of the standard and burden of proof of the facts and that Mrs Bell need prove nothing. He referred to *Ivey* and gave a good character direction in respect of Mrs Bell.

Decision on facts

The allegedly inaccurate statement that is referred to in the allegation is the statement purportedly written by Witness 3/Colleague A, exhibited by Witness 1 as exhibited BB/03. It states as follows (the Statement):

"I wish to provide this statement on behalf of Lesley Bell, whom is a trusted and ethical colleague working at St James accident and emergency department.

I have known Lesley for over a year now at both St James and also working in the capacity of bank at LGI A & E where I am currently working now.

Lesley is an exceptional nurse and is extremely suited to the accident and emergency role, yet she seems to have been singled out and treated differently by her senior colleagues and management unethically.

Lesley seems to be working an excessive amount of nights and weekends, which is not the case with other nursing colleagues and totally against trust policies. Yet staff in charge of the rota at St James appear to be manually inputting Lesley's shifts and they are not allocated fairly. I know that Lesley has approached this topic with seniors, but has simply been told 'tough, you can always reduce your hours'. Where does it say this in the trust guidelines?

When Lesley first started she was energetic, bubbly and eager to learn and progress especially with her previous background. However as time has passed, training courses cancelled time and time 'again and in to 2018, she appears to be working an excessive amount of nights, [PRIVATE] especially when staff are back chatting or slagging her off to her face.

In recent months she has worked bank at LGI A & E and I have seen Lesley in a different light yet again. She is like her original self and the total opposite of St James, happy, vibrant, bubbly, chatty and interactive with other colleagues. She clearly enjoys her role and staff treat her with respect. It is a complete transformation but it is clear that St James staff and seniority drains her passion. I am aware that Lesley has tried on 3 occasions to transfer to LGI to no gain, but for reasons cannot understand when it is the same CSU. It appears that the demeanour of staff in St James, would sooner lose an exceptional hard working nurse rather than appease Lesley and allow her to transfer to a department where she would flourish and I have no doubt would within the team and strive to her own goals."

The panel acknowledged that in her evidence it is accepted by Witness 3 that the working environment at St James' was challenging as Witness 3 stated in her witness statement : *"The Registrant was desperate and miserable at work. This whole thing has been horrible. I felt like I had been investigated. I just tried to offer support. I said I would write her a reference, but I was never actually asked to do that by her or anyone else. There was no formal request and nor have I prepared*

any written document in support of the Registrant's transfer from St James' Hospital."

The allegation flows from a planned meeting on 3 October 2018 between Mrs Bell and Witness 1, requested by Mrs Bell. Mrs Bell wanted a transfer from the Emergency Department at St James' Hospital to the Leeds General Infirmary. Witness 1 states that at the end of this meeting Mrs Bell handed Witness 1 three statements. Witness 1 states: "*I assumed [Mrs Bell] had obtained these statements in order to support her move and try to persuade me. She told me that one of the statements had been written by her husband and the other two were unnamed.... I pointed out that two of the statements were unnamed and undated, and she told me that, if it was needed, the two individuals will put their names on them. I told the Registrant that I would read the statements and get back to her. I had run out of time, so I did not read the statements there and then. I exhibit the statements at BB/02; BB/03 and BB/04.*"

Charge 1)

That you, a Registered Nurse:

- 1) At a meeting on 3 October 2018, provided / submitted an inaccurate statement in support of a work transfer;*

This charge is found proved.

In reaching this decision, the panel took into account the oral evidence of Witness 1 and 3, as well as all of the documentary evidence put before it.

Relevant emails referred to were all exhibited by NMC witnesses and full copies were provided to the panel.

The panel heard from Witness 3 who was clear in her live evidence that she had not written the statement produced and submitted by Mrs Bell at the meeting on 3

October 2018. Under robust cross examination by Mrs Bell Witness 3 maintained her position.

The panel found Witness 3's evidence consistent, cogent, credible and reliable. The contemporaneous email evidence supports and is consistent with the accounts of Witness 3, in particular the following:

On 5 October 2018 and 9 October 2018, Witness 1 sent email requests to Mrs Bell asking for the names of the two staff who provided the statements. On 10 October 2018, Mrs Bell replied to Witness 1, apologising for the delay explaining she wished to gain their consent prior to emailing their names and provided three names which included Witness 3/Colleague A. On 10 October 2018, Witness 1 requested Mrs Bell to clarify which of the three staff wrote the statements as there were only two statements provided.

On 12 October 2018 Mrs Bell tells witness 1 and 2 in an email that the names of the colleagues who wrote the statements, were Witness 3 and another person.

On 16 October 2018 Mrs Bell sent an email to Witness 3/Colleague A attaching the Statement and stating:

"hi [Witness 3],

hope you are well, please find attached copies of 2 statements. one is from [PRIVATE] (which she wrote) & the other (statement 2) I was hoping you would say you wrote it please. I'm desperate to get out of there for my own sanity as I don't feel can go on any more. other people have provided statements for [PRIVATE].

I know its a tall order and I wouldn't ask if i wasn't desperate. the bastards are trying to send me to J26 as per conversation with band 7 [PRIVATE] yesterday, as apparently is about building my confidence after my warning sanction as per [PRIVATE] yesterday 'youre not exactly brilliant are you' Ive taken this to RCN rep and shes sorting it with [Witness 2] hope you can help a desperate old bird out '

thanks

Lesley xxx"

As stated above, Mrs Bell was absent from the hearing from approximately 11am on 20 August 2024. Mrs Bell has not provided the panel with a signed witness statement. Mrs Bell did not give evidence to the panel. In fairness to Mrs Bell, the panel had regard to earlier written representations made by the RCN (dated 17 October 2019) within which Mrs Bell's position is set out.

The panel do not accept, as asserted by the RCN, on behalf of Mrs Bell who say the above email has been "*misconstrued*". The panel consider that on a fair and reasonable reading the email is clearly asking Witness 3 after the event to "*say you wrote it for me please*". The panel do not accept this suggestion and find that the sentences meaning is plain. The tone and choice of words within the email such as – "*I know it's a tall order and I wouldn't ask if I wasn't desperate*" and "*Hoping you can help at desperate old bird out*" infer Mrs Bell's state of mind when asking Witness 3 to participate in the action of representing the statement as hers.

The panel noted that Witness 3 reported the email she had received from Mrs Bell on 16 October 2018 to Witness 2. Witness 2 states that on 18 October 2018, he discussed the email with Witness 3 who was adamant she had not written the statement. This was the first occasion that Witness 3 had stated formally that she had not written this Statement. The panel noted the contemporaneous nature of this evidence, supported by emails seen by the panel as well as the level of consistency between Witness 1, 2 and 3. The panel further noted that she has maintained this position consistently and did so despite robust cross-examination by Mrs Bell. On 27 November 2018 Witness 1 and Witness 3 met and discussed the concerns and the record of that meeting is as follows:

Witness 1 question "Can you tell me did you provide a statement to LB to describe how you think she was being treated or felt? I

Witness 3 - No, I didn't"

Witness 3 states clearly in her written statement and live evidence that she never wrote the Statement. In the transcript of the cross examination of Witness 3 on 23 February 2023, her evidence is recorded as follows in a question put by the legal assessor assisting Mrs Bell:

“Q - And her position is as well that you are lying when you say and you reiterate in your supplementary statement that you did not write an email reference for the Registrant, that you did not write an email reference for the Registrant in support of her work transfer, and her position is that that is a lie and that you did do that for her.

A - That is absolutely not a lie. At no point have I ever written a statement at all, ever, for Lesley Bell, ever.”

Mrs Bell asserted that witness 3 was the author of the statement and in support of this referred to an undated email she said she had sent to Witness 3. The Panel was taken to this email by the NMC. This email states as follows:

“From: LESLEY BELL [PRIVATE]

...

hi [Witness 3],

just got your message, what do you mean youve changed you mind? wtf [Witness 3] this is your statment, you wrote this and gave it to me that weekend i worked at igi. you didn;t have any problems slagging off jimmies then or was that all for show in front of ya team, look how big i am. y7ou complete bitch. youve taken complete advantage of my vulnerability and befriended ne for your cwn outocme. you beyyer whatch your back. i;m fuming right know.” [sic]

In her live evidence Witness 3 told the panel that this undated email, purportedly sent to her by Mrs Bell complaining about Witness 3 not supporting her regarding the statement, was never received by her and that it contained a misspelling of Witness 3’s surname in the email address. She said that she had never seen the email. The panel noted that Witness 3 had previously given Mrs Bell her correctly spelt personal email address on 15 October 2018, which Mrs Bell had used successfully

to send Witness 3 the email on 18 October 2018. It appeared to the panel unlikely in such circumstances that Mrs Bell would not use that same email address. The panel therefore placed no weight upon this email which Mrs Bell stated supported her case.

The panel accepted the cogent and credible evidence of Witness 3 which was strongly supported by the documentary evidence, and it found this allegation proved.

Charges 2a) and 2b)

2) Sent, or caused to be sent, e-mails stating that Colleague A had provided the statement referred to in charge 1 above on / containing, the following dates:

- a. 10 October 2018;*
- b. 12 October 2018;*

These charges are found proved.

In reaching this decision, the panel took into account the written and oral evidence of Witness 1 and 3, as well as all of the documentary evidence, including the emails dated 10 and 12 October 2018 put before it.

As set out above, on 10 October 2018 Mrs Bell sent an email to Witness 1 stating that she had a statement from three people including Witness 3/Colleague A. On 12 October 2018 Mrs Bell told witness 1 and 2 in an email that she provides the names in respect of the statements, which included witness 3. These emails are exhibited by Witness 1 and the panel has considered them. Mrs Bell accepted, as stated in the RCN letter of 17 October 2019, that she did send these emails as alleged, albeit Mrs Bell asserts that what she said in them was true.

The panel found this allegation proved.

Charge 3)

- 3) *Sent, or caused to be sent, an e-mail to Colleague A dated 16 October 2018 requesting that Colleague A say that she had written a statement a referred to in charge 1 above;*

This charge is found proved.

In reaching this decision, the panel took into account the written and oral evidence of Witness 2 and 3, as well as all of the documentary evidence put before it.

The panel considered the evidence of Witness 2 and 3 who both exhibit this specific email of 16 October 2018 from Mrs Bell. The panel noted that the email address that it is sent from consistent with later emails from Mrs Bell to the NMC. That email, quoted in full above, speaks for itself and it does indeed request that Witness 3/Colleague A say that she had written a statement as referred to in charge 1. The panel found this proved.

Charges 4a) and 4b)

- 4) *Your conduct at any and / or all of charges 1- 3 above was dishonest in that you:*
- a. *Knew that the statement was inaccurate and / or had not been provided by Colleague A;*
 - b. *Intended to create the misleading impression that the statement had been provided by Colleague A*

These charges are found proved.

The panel was mindful of the *Ivey* test for dishonesty. The panel applied the ordinary and natural meaning of the words in the allegation and was mindful of the words “*inaccurate*” and “*misleading*”. The panel noted that charges 1, 2, and 3 cover the period from 3 – 18 October 2018 and it carefully considered the evidence indicating

Mrs Bell's state of mind. The panel focused in particular on the contemporaneous emails referred to and quoted above.

Particular 4a) – Proved

The panel found that on 3 October 2018 Mrs Bell meet with Witness 1 and provided her with the Statement. Mrs Bell's email to Witness 3 on 16 October 2018 makes clear, given the request it contains, that Mrs Bell knew on 3 October 2018 that Witness 3 had not prepared the Statement and it was therefore inaccurate.

As explained above, the panel do not accept, as asserted by the RCN, on behalf of Mrs Bell who say the above email has been "*misconstrued*". The panel consider that on a fair and reasonable reading the email is clearly asking Witness 3 after the event to "*say you wrote it for me please*". The panel do not accept this suggestion and find that the sentences meaning is plain. The tone and choice of words within the email such as – "*I know it's a tall order and I wouldn't ask if I wasn't desperate*" & "*Hoping you can help at desperate old bird out*" infer Mrs Bell's state of mind when asking Witness 3 to participate in the action of representing the statement as hers.

A distinction is also drawn by Mrs Bell between the other statement from [PRIVATE]. The panel found it was implausible that this language would be used, and this request would be made by Mrs Bell if Witness 3 had written the statement.

The panel has accepted the evidence of Witness 3 that she did not ever prepare any such statement.

In respect of charge 1, the panel found that on 3 October 2018 Mrs Bell knew that the statement was inaccurate, in that she knew from that point that it was not the work of Witness 3. She provided that statement at the meeting knowing that it was inaccurate. The panel decided that Mrs Bell knew that her actions were dishonest.

In respect of charge 2, by sending the emails as alleged (dated 10 & 12 October 2018), and proved, knowing that the statement was not the work of Witness 3/Colleague A and therefore inaccurate, the panel decided that Mrs Bell knew that

her actions were dishonest. Viewed objectively those actions were dishonest. Mrs Bell was presenting a misleading picture by relying on a Statement that she knew was not the work of Witness 3/Colleague A.

In respect of charge 3, the email of 16 October 2018 makes clear that Mrs Bell knew that she had provided an inaccurate statement and that was why she was then asking Witness 3/Colleague A two weeks later to "...say you wrote it please". That indicates clearly the mind of Mrs Bell. She knew that she had lied about the statement being the work of Witness 3. Viewed objectively that was dishonest.

The allegation is therefore proved in respect of charges 1, 2, and 3.

Particular 4b) – Proved

Considering the evidence in the round, and given its earlier findings, the panel was of the view that all of Mrs Bell's actions as alleged, and found proved, were intended to create a misleading impression that the Statement had been provided by Witness 3/Colleague A. It had not, and Mrs Bell knew that was so. Viewed objectively her actions found proved were all dishonest, they were all part of a course of conduct deliberately and consistently designed to mislead and to deceive.

Fitness to practise

Having reached its decision 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 Mrs Bell'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 suitability to remain on the register unrestricted.

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 decide 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, Mrs Bell's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Kabasinkas referred the panel 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 Kabasinkas invited the panel to decide that the facts found proved are serious and amounted to misconduct. Mr Kabasinkas identified the relevant standards he submitted that Mrs Bell had breached: Standards 8.2, 20.1, 20.2 and 20.3 of the NMC Code.

Mr Kabasinkas submitted that in relation to all of the charges, collectively and individually, they are serious and amount to misconduct.

Submissions on impairment

Mr Kabasinkas moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He referred to *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and to *Cohen v GMC* [2008] EWHC 581 (Admin). Mr Kabasinkas also referred the panel to the NMC guidance on impairment.

Mr Kabasinkas submitted that all of the charges undermine core professional standards and raise fundamental concerns about Mrs Bell's trustworthiness as a

registered professional. He submitted that Mrs Bell has not been honest in her work and had not remedied her actions.

Mr Kabasinkas submitted that Mrs Bell was dishonest. He referred the panel to the further 68-page bundle provided by the NMC containing full details of a new referral in respect of which Mrs Bell is alleged to have been dishonest. He advised that this referral had now passed the NMC Case Examiners and would be referred to a final hearing. He submitted that there was a high risk of repetition given Mrs Bell has an attitudinal issue with acting honestly and her written reflection demonstrated very limited insight.

Mr Kabasinkas submitted that there is no evidence of good practice since her dismissal and therefore no remediation of her practice.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments including *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

The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (the Code) in making its decision.

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

'1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.1 treat people with kindness, respect and compassion

8 Work co-operatively

To achieve this, you must:

8.2 maintain effective communication with colleagues

16 Act without delay if you believe that there is a risk to patient safety or public protection

To achieve this, you must:

16.5 do not obstruct intimidate victimise or in any way hinder a colleague, member of staff, person you care for or member of the of the public who wants to raise a concern

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the findings are that Mrs Bell repeatedly and deliberately acted dishonestly in her professional role. The panel therefore decided, in light of its findings that Mrs Bell's actions, collectively and individually, fell seriously short of what would have been proper in the circumstances and far short of the conduct and standards expected of a nurse and therefore amount to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Bell's fitness to practise is currently impaired.

The panel considered that nurses occupy a position of privilege and trust in society and are expected at all times to be professional and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and

open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

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

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

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

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

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

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

In considering whether Mrs Bell's fitness to practise is currently impaired, the panel took into account the additional 68 page 'Impairment bundle' and the oral submissions of Mr Kabasinkas. The panel also took into account all relevant written information within the bundles, including Mrs Bell's 82-page hearing bundle. In particular, the panel considered Mrs Bell's reflective pieces, one dated 20 February 2023, and undated written pieces, within which she confirms her experiences and skills as a nurse, as well as some training certificates and testimonials.

As stated, the panel concluded that in finding all the charges proved, Mrs Bell has significantly breached the high standards expected of a registered nurse.

The panel was aware that demonstrating remediation following findings of repeated dishonesty is inherently difficult as it indicates a deep-seated attitudinal failing. The panel noted that the proven charges took place at a time when Mrs Bell [PRIVATE]. Whilst this provides some context to Mrs Bell's behaviour, the panel is mindful that this cannot excuse Mrs Bell's multiple dishonesty. The panel considered that dishonesty is a conscious and deliberate act or omission; there is no direct causal link between stressors/personal problems and dishonest behaviour.

In considering whether Mrs Bell has expressed remorse about her conduct the panel considered her written representations. The panel noted in one of her reflections Mrs Bell states: *"I am truly remorseful that the situation has come to this, but unfortunately I cannot take back what I did or said by sending the email."*

The panel noted that Mrs Bell has expressed some remorse, however the panel concluded that Mrs Bell's remorse appears to relate to her finding herself in this situation. The panel considered that this does not equate to meaningful remorse in relation to the charges found proved. In support of this view, the panel noted the following from Mrs Bell in her 20 February 2023 reflective piece: *"Had I not sent the email, it would have been her word against mine, but out of sheer frustration I have now involved h in a NMC investigation to which I definitely did not want to happen".*

The panel noted that Mrs Bell has completed courses but noted, with the possible exception of “Band 5 Nurses development programme”, all the training certificates relate to mandatory, with some clinical training, for a new role. In addition, the certificates are mainly dated 2020. The panel did not consider this to be neither recent nor relevant training which goes towards remediating dishonesty.

In considering insight, the panel, the panel took account of the undated written reflection submitted by Mrs Bell in her bundle:

“I would like to take this opportunity as I portray myself as a professional person with high standards of care, offering compassion, care, commitment, courage, competence & effective communication skills in all aspects of my work, but I am honest and trustworthy, which can be demonstrated when I have been placed as Nurse In Charge.

Since my employment with the NHS 2004 I have never been accused of being dishonest, nor have I been dismissed for any other misconduct hearing.”

The panel was not satisfied that Mrs Bell has demonstrated any meaningful insight into the consequences of her dishonesty and her lack of judgment in relation to the Statement. She does not address the impact of her behaviour upon Witness 3, her former employer, her former colleagues, the wider profession, and the public.

Taking account of the nature of her remorse, the absence of remediation and lack of insight, Mrs Bell has failed to demonstrate that she has taken appropriate and necessary action to ensure that the misconduct will not happen again in the future. On the contrary, the panel found the risk of repetition to be high.

The panel considered the 68-page NMC Impairment bundle, which included a Case Examiners’ decision in relation to Mrs Bell dated 25 January 2024. This states as follows:

“The Case Examiners decided there is a case to answer and have passed it to the Fitness to Practise Committee. The reasons the case examiners gave for their decision:

Details of the regulatory concerns:

You were referred to the Nursing and Midwifery Council (‘NMC’) on 21 July 2022 by SF, Associate Director of Nursing for Unplanned Care, Bradford Teaching Hospitals NHS Foundation Trust (‘the Trust’). This referral resulted in an investigation by the NMC, which identified the regulatory concerns set out below.

A regulatory concern is an issue that the NMC sees as being a possible risk to the public, to professional standards or to the public’s confidence in nurses, midwives and nursing associates.

The regulatory concerns are:

- 1. Dishonesty - in that you: a. Falsified patient records; and, b. Falsified a social media (WhatsApp) message from a colleague.*
- 2. Failure to uphold the reputation of your profession – in that you behaved inappropriately towards your colleague.*

These regulatory concerns relate to incidents that are said to have taken place at the Trust while you were working as a Band 5 Registered Nurse in the Emergency Department.”

This panel was very clear that these 2024 Regulatory Concerns are not proven. When making an independent assessment of the risk of repetition, the panel took into account all the information made available to it. This now includes a 2024 decision by NMC Case Examiners that there is a case to answer in relation to new regulatory concerns, which includes a regulatory concern of dishonesty.

In all these circumstances, the panel concluded that Mrs Bell’s ability to practise safely and effectively is currently impaired.

In considering the wider public interest, the panel had regard to the important public policy issues which include the need to maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour.

In the panel's judgment, Mrs Bell's dishonest conduct demonstrated a blatant disregard of her professional standards. Well-informed and reasonable members of the public would be extremely concerned to learn that a registered nurse has behaved dishonestly, and in the way found proven by this panel. It is critically important that NMC professionals demonstrate honesty and integrity. The ability for the public to trust the words and actions of a professional nurse is vital.

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 finds Mrs Bell's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mrs Bell's fitness to practise is currently impaired.

Sanction

The panel decided to make a striking-off order. It directs the registrar to strike Mrs Bell off the register. The effect of this order is that the NMC register will show that Mrs Bell has been struck-off the register.

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 Kabasinkas stressed the need for proportionality. He submitted that there were aggravating features in this case. He submitted that Mrs Bell showed a lack of insight, a repeated pattern of behaviour as this was not a one-off incident and that Mrs Bell was dishonest in her conduct.

Mr Kabasinkas submitted that the mitigating features in this case was that there were contextual factors such as the working environment and that there was some personal mitigation.

Mr Kabasinkas submitted that Mrs Bell showed a lack of remorse and insight into her failings. He submitted that no order and a caution order would not be applicable in this case. Mr Kabasinkas submitted that a conditions of practice order would not adequately address the public interest and was more appropriate for clinical concerns.

Mr Kabasinkas referred the panel to the NMC SG. He submitted that Mrs Bell was partially engaged in the proceedings and that when she cross-examined the witnesses, she was not honest. Mr Kabasinkas submitted that Mrs Bell subsequently decided to disengage.

Mr Kabasinkas submitted that there is a risk of repeated behaviour. He submitted confidence cannot be maintained through a suspension order. Mr Kabasinkas referred the panel to the NMC SG on seriousness and dishonesty.

Mr Kabasinkas submitted that a striking-off order would be the most appropriate order to impose at this stage.

Decision and reasons on sanction

Having found Mrs Bell'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 also took into account the following mitigating features:

- The context of the working environment, as stated in the evidence by Witness 3
- [PRIVATE]
There was no evidence of patient harm

The panel took into account the following aggravating features:

- Premeditated behaviour in relation to Mrs Bell providing the Statement and sending subsequent emails on 10, 12, and 16 October 2018
- There was personal gain in that Mrs Bell sought to transfer department
- There was no evidence of any insight
- There is a pattern of behaviour, noting that there three separate charges found proven
- Mrs Bell implicated another registered nurse and called into question the honesty of Witness 3.

The panel first considered whether to take no action but concluded that this would be inappropriate and insufficient 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 due to the nature and gravity of the panel's findings.

It then considered the imposition of a caution order but again decided that, due to the dishonesty in this case, an order that does not restrict Mrs Bell'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 Mrs Bell's misconduct was not at the lower end of the spectrum and that a caution order 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 impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Bell's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the

nature of the charges in this case. The misconduct identified is not something that can be sufficiently addressed through supervision or retraining. It agreed with the NMC that this case does not include clinical concerns. Furthermore, the panel concluded that the placing of conditions on Mrs Bell's registration would not sufficiently 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 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 Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*
- ...
-

The panel analysed each of these factors in turn and concluded:

- This is not a single instance, rather multiple dishonesty
- The panel considered multiple dishonesty to be an attitudinal problem.
- The panel is mindful that there are current allegations including dishonesty in respect of which NMC Case Examiners have concluded there is a case to answer.
- The panel has found that Mrs Bell has no insight into her misconduct which gives rise to a high risk of Mrs Bell repeating the behaviour.

As a result, the panel decided that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Consequently, the panel considered a striking-off order and took note of the following paragraphs of the SG:

- *Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?*
- *Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?*
- *Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?*

Balancing all of these factors and after taking into account all the evidence, the panel decided that the appropriate and proportionate sanction is that of a striking-off order. The panel has found that Mrs Bell's multiple dishonesty was a significant departure from the standards expected of a registered nurse and is fundamentally incompatible with her remaining on the register. The panel considered that honesty and integrity are intertwined and critical to safe and effective nursing practice.

The panel has found that Mrs Bell's actions were so serious that to allow her to continue practising as a registered nurse, would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel concluded that a striking-off order was necessary to protect the public and marks the importance of maintaining public confidence in the profession. It will also send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to Mrs Bell in writing.

Interim order

Mr Kabasinkas applied for an 18-month interim suspension order.

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in your own interest until the striking-off 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 Kabasinskas. He submitted that an interim suspension order for a period of 18 months is necessary to protect the public and is otherwise in the public interest.

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 striking-off 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 to allow sufficient time for any appeal to be heard. The panel is satisfied that such an order is appropriate and proportionate in the circumstances of this case.

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

That concludes this determination.