

Nursing and Midwifery Council Fitness to Practise Committee

Substantive Hearing
Tuesday, 9 January 2024 – Friday, 12 January 2024
Monday, 22 January 2024 – Friday, 26 January 2024

Virtual Hearing

Name of registrant: Yosi Daniel Akut

NMC PIN: 99D13700

Part(s) of the register: Registered Adult Nurse – Sub part 1
RN1: Level 1 (23 April 1999)

Registered location: Edinburgh

Type of case: Misconduct/Lack of competence

Panel members: Avril O'Meara (Chair, lay member)
Kim Bezzant (Registrant member)
Frances McGurgan (Lay member)

Legal Assessor: Michael Hosford-Tanner

Hearings Coordinator: Sherica Dosunmu (9 January 2024)
Clara Federizo (10-12, 22-26 January 2024)
Samantha Aguilar (11 January 2024)

Nursing and Midwifery Council: Represented by Lucie Danti, Case Presenter

Mrs Akut: Present and represented by Adewuyi Oyegoke

Admitted charges: Charges 1, 2c(i), 2c(ii), 2d, 2f, 2g, 2h, 2i, 2j, 2k, 2l, 3a(i)-(iv), 3b, 3c, 3d, 3e, 3f, 4, 5, 11a, 11b, 11c, 14a, 14b, 15 and 16

Offering no evidence: Charges 12a, 12b and 13

No case to answer: Charges 2b and 10

Facts proved: Charges 2a, 6a, 8a, 8b, 9 and 14c

Facts not proved: Charges 6b and 7

Fitness to practise:

Stage not reached

Sanction:

Stage not reached

Interim order:

Stage not reached

Decision and reasons on application to amend the charges on day 1

The panel heard an application made by Ms Danti, on behalf of the Nursing and Midwifery Council (NMC), to amend charges 2c(ii), 2e, 2k, 3b, 3c, 3d, 3e, 4 and 12 under Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004' as amended (the Rules).

Ms Danti referred the panel to charges 2e and 2i. She explained that charge 2e is a repetition of charge 2i and the proposed amendment is to remove charge 2e as a duplicate. Additionally, Ms Danti highlighted that there are grammatical errors in charges 2c(ii), 2k, 3b, 3c, 3d, 3e and 4, which would require minor changes to the wording of each charge.

Ms Danti also referred the panel to charge 12. She proposed to change the date from '10 April 2019' to '12 April 2019'. She submitted that it is apparent from the evidence in this matter that the date in charge 12 is incorrect, and the proposed amendment would more accurately reflect the evidence.

Ms Danti submitted that overall, the proposed amendments only relate to grammatical and administrative errors. She submitted that such amendments would ensure accuracy and would not cause prejudice or injustice to you.

Mr Oyegoke, on your behalf, indicated that he did not object to any of the proposed amendments.

Proposed amendments:

"[...]"

2) While subject to an informal capability process you:

...

c) On 2 December 2018 in respect of an unknown patient:

i) ...

ii) Failed **to** identify and/or document **that** their elbow was swollen.

...

e) ~~On or around 10 April 2019 during moving and handling of a patient you drag lifted an unknown patient up the bed.~~

...

k) On **a** date unknown left an unknown patient on the toilet who was at high risk of falls.

...

3) Between 29 July 2019 and 20 August 2020 whilst subject to an Informal Capability Action Plan you:

...

b) On or around 17 October 2019 failed to complete **a** risk assessment on delirium and impairment for an unknown patient.

c) On or around 17 October 2019 failed to complete **an** infection prevention assessment for **an** unknown patient.

d) On or around 17 October 2019 failed to complete **a** Malnutrition Universal Screening Tool (“MUST”) assessment for an unknown patient within 6 hours of admission.

e) On or around 17 October 2019 failed to complete **a** Waterlow (Pressure Area Risk Assessment Chart) within 6 hours of admission for an unknown patient.

...

4) Between 1 September 2018 and 29 July 2019 did not ~~to~~ complete an accountability workbook when requested to do so by Nurse A.

[...]

12) On ~~4~~ **12** April 2019;

a) ...

b) ...”

The panel accepted the advice of the legal assessor and had regard to Rule 28.

The panel was of the view that such amendments did not change the nature or gravity of the charges against you. On the basis that there has been no objection to the proposed

amendments, the panel was also satisfied that there would be no prejudice to you and no injustice would be caused to either party. The panel determined that it was therefore appropriate to allow the amendments above, to ensure clarity and accuracy.

Decision and reasons on application to amend the charges on day 3

On day 3 of the proceedings, the panel heard a further application from Ms Danti to amend the wording of charges 6b, 8a, 8b and 9. The proposed amendments for charges 6b, 8a, 8b and 9 are as follows:

“[...]

6. On 9 December 2018 in respect of Patient A:

a) ...

b) Incorrectly told ~~Nurse A~~, Nurse ~~B C~~ and Nurse D that you had not touched the Syringe Driver pump when you were asked.

[...]

8. On ~~23~~ **24** December 2018 having been asked ~~told~~ by Nurse A **on 22**

December 2018 that Nurse E would discuss to bring and/or have available your the accountability booklet workbook with you;

a) ~~Did not bring and/or have available your accountability booklet for discussion with Nurse E.~~ **Refused to discuss the accountability workbook with Nurse E.**

b) Incorrectly told Nurse E that **Nurse A had not told you the you had not been asked to bring your accountability booklet workbook would be discussed.**

9. Your actions at charge 8b above were dishonest in that you knew Nurse A had ~~requested~~ **told you that Nurse E would be discussing the accountability workbook with you** ~~bring your accountability booklet for discussion.~~”

Ms Danti submitted that in respect of the evidence that has come to light, in particular, the audio recording provided by you and the oral evidence of Nurse A, an application should be made in respect of charge 6b to remove '*Nurse A*'. Ms Danti submitted that there would be no injustice caused to either party and that the substance of the charge remained the same, and "*crucially, so does the seriousness of the charge*". Also, Ms Danti submitted that Nurse B was referenced in the main evidence bundle as Nurse C and although it was clear to you and the NMC who this individual is, the panel might be minded to amend the charge to reflect the evidence in the bundle. Ms Danti submitted there was no injustice in making such an amendment. It was required to ensure that the charge accurately reflects the evidence and it is clear to the panel who the individual is.

In respect of charges 8a, 8b and 9, Ms Danti submitted that the charges relate to "*not engaging with the process of filling in the accountability workbook*" and that the fundamental substance of the charges remained "*entirely the same*". She submitted that her proposed new charges would reflect the evidence contained within the audio file that was only disclosed last week.

Ms Danti submitted that had the audio recording been brought to the attention of the NMC sooner, the amendments proposed would have been made at an earlier stage. The dishonesty and the misconduct that the NMC are concerned with is alleged that you knew that you were supposed to discuss the accountability workbook with Nurse E.

Ms Danti addressed the issue of fairness. She reminded the panel that fairness "*cuts both ways and is required to be considered in respect of the NMC and the Registrant*". She submitted that the level of seriousness remains entirely the same and that no prejudice would be caused to you as a result of the proposed amendments, as you have been in possession of the recording for years and have chosen not to disclose it until very recently.

Mr Oyegoke submitted that in respect of the proposed amendment to charge 6b, of 'Nurse B' to 'Nurse C', that you have been aware since the outset who this individual is and there is no objection to making this amendment.

Mr Oyegoke submitted that he strongly opposed the NMC's application to the other proposed amendments to charges 8a, 8b and 9 at this stage of the hearing, because the amendments submitted by the NMC are unfair to you and made at a very late stage. He told the panel that the main purpose of the NMC is for the protection of the public and to "equip" the nurse with an understanding of the legal limits of their actions and the consequences.

Mr Oyegoke told the panel that allowing the amendments is serious as the charges are connected with an allegation of dishonesty. He told the panel that he wholly disagreed with the manner in which the NMC set out their case at this late stage. He submitted that changing the wording in charge 8a and charge 8b from 'bring' to 'discuss' was not merited as it did not relate to behaviour in "a clinical setting". He submitted that there are ways that the panel can deal with the matters relating to the accountability booklet which would in no way increase the severity of the charges that you faced. If the application were approved, it would require the recalling of Nurse A.

Mr Oyegoke also submitted that allowing such amendments after a witness has given their evidence would be unfair and that witness would need to be recalled. He submitted that it was too late in proceedings to amend these charges and to allow this would cause significant injustice to you.

Ms Danti responded to Mr Oyegoke's submission and submitted that in respect of Nurse A being recalled after providing evidence, and she submitted that Nurse A had been "crystal clear" in her evidence about the conversation that she had with you regarding completing the workbook on 24 December 2018. Further, she submitted that Nurse A was very clear that she was not suggesting that you have been dishonest and that such a suggestion

would have been inappropriate, as it is for the panel to determine any charges of dishonesty. Nurse A's purpose as a witness was to present the facts and her evidence.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of the Rules.

The panel was of the view that the amendments to charge 6b, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendments being allowed. The panel noted Nurse A's evidence that she was not working on 10 December 2018. It also noted that Mr Oyegoke did not have any objection to amending the charge to reflect that Nurse C was the relevant individual. The panel noted that Mr Oyegoke and you were aware of who this individual was, and the substance of the charge remained the same. The panel determined it was therefore appropriate to allow the amendments, as applied for, to better reflect the evidence in respect of charge 6b.

The panel carefully considered the application to amend charges 8a, 8b and 9. It recognised that the existence and late submission of the audio recording has had an impact on these charges. It accepted that the alleged mischief in these charges is in relation to you not engaging in discussions with Nurse E regarding the accountability workbook, having been told by Nurse A to do so, on 24 December 2018. It is now clear from the audio recording and evidence of Nurse A that you did not have the booklet in your possession on 24 December 2018.

The panel accepted that it is not ideal to amend the charges after the witness evidence has started and acknowledged that there is a risk that a witness has to be recalled. However, it considered that Nurse A's evidence concerning the need for you to go through the booklet with Nurse E was consistent with the audio recording you produced. The panel noted that Nurse E, the other witness in relation to this charge has yet to give oral evidence. The panel bore in mind that it has discretion to amend the wording of the charges before making its findings of fact. It noted that Mr Oyegoke has the opportunity to

cross examine subsequent witnesses to challenge their oral evidence, that Nurse A can be recalled if necessary, and that the persuasive burden still lies with the NMC.

In considering the overall merit and fairness, the panel decided that given that charges 8a, 8b and 9 relate to allegations of dishonesty, the panel was of the view that it is fair to amend these charges to explore whether or not the allegations are true or not. Although the substance of the charges has changed, the panel was satisfied there was no change in the nature of the alleged mischief or the seriousness of the charges. The audio recording supports the suggestion that you were to *'go through'* the workbook with Nurse E on 24 December 2018, although the workbook was not given to you in advance by Nurse A. The panel determined that no injustice would be caused to you in allowing the amendment and decided it was fair to allow the amendments in respect of charges 8a, 8b and 9.

Decision and reasons on a further application to amend charge 6

During the course of the proceedings, Ms Danti made a further application to amend charge 6. The proposed change was only a matter of date correction as opposed to any change to the substance of the charge. She submitted this was a minor correction to accurately reflect the evidence and in the interest of justice. She submitted that this amendment will not cause any prejudice to you by this being allowed.

The proposed amendment is as follows:

“[...]

2) On ~~9~~**10** December 2018 in respect of Patient A:

a) ...

b) ...”

Mr Oyegoke submitted that there is no objection to this application.

The panel took into account the submissions made by Ms Danti and noted that this was not contested by Mr Oyegoke. It therefore determined that there would be no unfairness towards you in allowing this amendment for the purpose of more accurately reflecting the evidence before it. This application as granted and changes were applied to the charge.

Details of charges (as amended)

That you, a registered nurse, failed to demonstrate the standards of knowledge, skill, and judgement required to practise without supervision as a Band 5 nurse, in that you:

- 1) Between 1 September 2018 and May 2019 on one or more occasions provided care to patients on your own when they required two members of staff to assist.
[ADMITTED]

- 2) While subject to an informal capability process you:
 - a) On 21 November 2018 you rushed an unknown patient to eat. **[PROVED]**
 - b) On or around 21 November 2018 you were unable to feedback and/or verbalise the care required for two patients. **[NO CASE TO ANSWER]**
 - c) On 2 December 2018 in respect of an unknown patient:
 - i) Failed to carry out a skin inspection. **[ADMITTED]**
 - ii) Failed to identify and/or document that their elbow was swollen.
[ADMITTED]
 - d) On 3 December 2018 failed to communicate with a patient when you were moving them following a fall. **[ADMITTED]**
 - e) ...
 - f) On or around 10 April 2019 rushed and/or were rough with an end-of-life patient when assisting her to the toilet. **[ADMITTED]**
 - g) On 17 April 2019 failed to explain to an unknown patient that you were going to move her arm prior to injecting her with insulin. **[ADMITTED]**
 - h) On 17 April 2019 had to be prompted and/or were unable to use the control for a hospital bed. **[ADMITTED]**

- i) On 12 April 2019 failed manual handling training in that you while repositioning an unknown patient handled them underarm/under their shoulder joint. **[ADMITTED]**
 - j) On 26 April 2019 in respect of an unknown deceased patient had to be prompted not to remove a urinary catheter until death had been verified. **[ADMITTED]**
 - k) On a date unknown left an unknown patient on the toilet who was at high risk of falls. **[ADMITTED]**
 - l) On a date unknown were unable to explain and/or use a falls monitor. **[ADMITTED]**
- 3) Between 29 July 2019 and 20 August 2020 whilst subject to an Informal Capability Action Plan you:
- a) When given a scenario where a patient had placed a cord wrapped around their neck you were unable to explain that you should:
 - i) Talk to the patient; **[ADMITTED]**
 - ii) Remove the cord from the patient's neck; **[ADMITTED]**
 - iii) Datix the incident; **[ADMITTED]**
 - iv) Undertake an anti-ligature assessment. **[ADMITTED]**
 - b) On or around 17 October 2019 failed to complete a risk assessment on delirium and impairment for an unknown patient. **[ADMITTED]**
 - c) On or around 17 October 2019 failed to complete an infection prevention assessment for an unknown patient. **[ADMITTED]**
 - d) On or around 17 October 2019 failed to complete a Malnutrition Universal Screening Tool ("MUST") assessment for an unknown patient within 6 hours of admission. **[ADMITTED]**
 - e) On or around 17 October 2019 failed to complete a Waterlow (Pressure Area Risk Assessment Chart) within 6 hours of admission for an unknown patient. **[ADMITTED]**

- f) On or around 17 October 2019 on one or more occasions failed to complete risk assessments for unknown patients within the 24-hour timeframe.
[ADMITTED]

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

That you, a registered nurse:

- 4) Between 1 September 2018 and 29 July 2019 did not complete an accountability workbook when requested to do so by Nurse A. **[ADMITTED]**
- 5) Between 1 September 2018 and 29 July 2019 on more than one occasion shouted at an unknown patient. **[ADMITTED]**
- 6) On 10 December 2018 in respect of Patient A:
- a) Failed to inform the nurse in charge that you had paused their syringe driver. **[PROVED]**
 - b) Incorrectly told Nurse C and Nurse D that you had not touched the Syringe Driver pump when you were asked. **[NOT PROVED]**
- 7) Your actions at charge 6b were dishonest in that you knew that you had paused the pump. **[NOT PROVED]**
- 8) On 24 December 2018 having been told by Nurse A on 22 December 2018 that Nurse E would discuss the accountability workbook with you:
- a) Refused to discuss the accountability workbook with Nurse E **[PROVED]**
 - b) Incorrectly told Nurse E that Nurse A had not told you the accountability workbook would be discussed. **[PROVED]**

- 9) Your actions at charge 8b above were dishonest in that you knew Nurse A had told you that Nurse E would be discussing the accountability workbook with you. **[PROVED]**
- 10) On 7 January 2019 shouted at Nurse A. **[NO CASE TO ANSWER]**
- 11) On 26 February 2019:
- a) on one or more occasions shouted at Nurse A. **[ADMITTED]**
 - b) acted in an aggressive manner towards Nurse A; **[ADMITTED]**
 - c) refused to leave when requested to do so by Nurse A. **[ADMITTED]**
- 12) On 12 April 2019:
- a) failed to fully check an unknown patient's incontinence pad. **[NO EVIDENCE]**
 - b) Signed the unknown patient care rounding stating the incontinence pad was clean and dry. **[NO EVIDENCE]**
- 13) Your actions at charge 12b above were dishonest in that you knew you had not adequately checked the incontinence pad. **[NO EVIDENCE]**
- 14) On 26 April 2019 you:
- a) Acted in an aggressive manner towards Nurse A; **[ADMITTED]**
 - b) On one or more occasions shouted and/or screamed at Nurse A. **[ADMITTED]**
 - c) Shouted at Nurse A that she "would be struck down by god" or words to that effect. **[PROVED]**
- 15) On 1 October 2019 failed to administer to Patient B pain relief medication, "Oramorph". **[ADMITTED]**
- 16) On or around 21 October 2019 shouted at Nurse B. **[ADMITTED]**

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

Decision and reasons on application to admit hearsay evidence relating to charges 12 and 13

The panel heard an application made by Ms Danti under Rule 31 to allow the written witness statement of Ms 1 into evidence, paragraph 64 of Nurse A's witness statement and relevant exhibit. Ms 1 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend today. She submitted that there is good reason for Ms 1 not to attend as she is on maternity leave since August 2023, and there is no duty upon her to attend such proceedings in her role as a healthcare support worker.

Ms Danti submitted that the evidence from Ms 1 is relevant as it speaks to charges 12 and 13 and is not sole or decisive, as this can be confirmed and/or challenged when Nurse A provides oral evidence to the panel. She also submitted that there is no objection to the relevant exhibit as this is recorded in the case management form and there are no reasons for Ms 1 to fabricate any evidence. Further, she submitted that you did have prior notice that the witness statements were likely to be read and you were provided with this information prior to the hearing. Ms Danti submitted that for all the above reasons, it is therefore fair and relevant to admit this hearsay statement into evidence.

With respect to the application, Mr Oyegoke submitted that it is not fair to admit the hearsay evidence produced by Ms 1. He highlighted an email response, dated 5 July 2023, from Ms 1 to the NMC's request for a signature for the witness statement, which states:

"...As I said on the phone previously, I have no recollection of this and none of the dates add up so I'm not happy to sign any paperwork. I will not be attending any hearing so I guess you could just withdraw my statement."

Mr Oyegoke submitted that such evidence cannot be taken any further. He submitted it is not relevant nor fair to admit given Ms 1 herself has requested that her statement be withdrawn and it is not evidence supported by Ms 1. He added that the witness statement before the panel remains unsigned. Further, in relation to the allegation of dishonesty, he submitted that no other charges as such were admitted. He submitted that you had not been made aware of the information regarding the correspondence, dated 5 July 2023, between Ms 1 and NMC, until very recently. He submitted that for the reasons above, this application should be rejected.

In response, Ms Danti submitted that the NMC are not required to disclose emails received in the course of correspondence in advance of the hearing. She stated that this information has now been disclosed as part of a hearsay application, which was only produced in the last 24 hours because your position in relation to the admission of certain charges had recently changed. She submitted that the panel may consider that the hearsay statement is a local statement made at the time and is contemporaneous 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 that Rule 31 provides that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The panel was referred to the cases of *Thorneycroft v NMC* [2014] EWHC 1565 (Admin), *El Karout v NMC* [2019] EWHC 28 (Admin), *Mansardy v NMC* [2023] EWHC 730 (Admin).

The panel was of the view that the evidence produced by Ms 1 was directly relevant as it relates to charges 12b and 13. The panel noted that Ms 1's evidence regarding charge 12a was double hearsay as she was not a direct witness to the alleged events and was reporting to other members of staff what others had told her.

In respect of fairness, the panel determined that it was not fair to admit this evidence. Although the panel noted that the NMC had made efforts to ensure the attendance of Ms 1, it recognised she is not a registered nurse therefore there is no duty on her to attend. Further, there is information before the panel which indicates that Ms 1 refused to sign her statement, requested for it to be withdrawn and does not want to take part in the hearing. It also considered that Ms 1 states that she does not remember the events. The panel considered that in light of all the evidence, Ms 1 does not support her statement and it therefore, determined that the evidence was not demonstrably reliable. The charges allege dishonesty and the reasons for Ms 1 refusing to sign the statement, which had been drafted for her, should have been disclosed to you at the earliest opportunity and not during the hearing. In these circumstances, the panel refused the application.

Decision and reasons on application to admit hearsay evidence of Nurse D in relation to charges 6a, 6b and 7

The panel heard another application made by Ms Danti under Rule 31 to allow the written statement of Nurse D and relevant exhibits into evidence. Ms Danti regrettably informed the panel that Nurse D was not present at this hearing as she has sadly passed away. She submitted that her evidence is highly relevant, particularly to charges 6a, 6b and 7, which are serious.

Ms Danti submitted in regard to fairness, that Nurse D's evidence is not sole nor decisive as Nurse C is also providing oral evidence to the panel, which can support the more fundamental elements of the alleged charges and she can be cross-examined. Further, Ms Danti submitted that there is no evidence to suggest that Nurse D would have fabricated evidence against you. She submitted that Nurse D's evidence is only corroborative and provides context to the alleged charges and added that the panel may consider what weight to attach to it at a later stage. She submitted there is no unfairness to you in allowing this evidence to be admitted and invited the panel to accept the application.

With respect to the application, Mr Oyegoke submitted that although the panel may find the evidence of Nurse D to be relevant, it would be unduly unfair to you to admit evidence which cannot properly be cross-examined given that you firmly deny these allegations.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application.

The panel gave the application in regard to Nurse D serious consideration. The panel noted that Nurse D's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement ... is true to the best of my information, knowledge and belief'* and was signed by her.

The panel determined that the evidence was highly relevant as it speaks to specific allegations, these alleged charges were serious, and Nurse D was a direct witness of the events and was the person in charge of the unit. It noted that the evidence was signed, dated and contemporaneous.

In terms of fairness, the panel determined that this evidence was not the sole or decisive evidence in relation to the charges as the panel will hear oral evidence from Nurse C. It also considered that there was no information to suggest that Nurse D had any reason to fabricate evidence, and although the panel noted Mr Oyegoke's submission that you were not aware until recently that Nurse D had passed away, there is understandably a reason for her non-attendance.

The panel considered that you had been provided with a copy of Nurse D's statement in advance and there was also a public interest in the issues being explored fully and this supported the admission of this evidence into the proceedings. The panel considered that any unfairness in this regard was limited and worked both ways, in that both the NMC and the panel were also deprived of reliance upon the live evidence of Nurse D and the opportunity of questioning and probing that testimony.

In these circumstances, the panel came to the view that it would be fair and relevant to accept into evidence the written statement of Nurse D and it would give what weight it deemed appropriate once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application to offer no evidence

The panel considered an application from Ms Danti to offer no evidence in respect of charges 12a, 12b and 13.

In relation to this application, Ms Danti submitted that following the panel's earlier decision not to admit hearsay evidence in relation to Ms 1, the NMC offers no evidence in respect of charges 12a, 12b and 13, which Ms 1's evidence related to. She submitted that it is not in the public interest for the NMC to pursue factual charges against a nurse if there is not enough evidence to prove the facts or if the charge relies on the evidence of a witness who cannot attend the hearing. She submitted that the evidence of Ms 1 was the sole and decisive evidence in respect of charges 12 and 13. She invited the panel to accept that the NMC are offering no evidence because there is no longer a realistic prospect that the facts will be found proved.

Mr Oyegoke did not oppose the application.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. It took into account the submissions made by Ms Danti, which Mr Oyegoke did not oppose.

The panel noted that majority of charges are admitted, and these relate to lack of competence and misconduct. It noted that the dishonesty allegations are not admitted anywhere else. The panel was of the view that, taking account of all the evidence before it,

there was not a realistic prospect that it would find the facts of charges 12a, 12b and 13 proved. The panel was also satisfied there is no realistic prospect of other evidence being obtained in relation to these charges.

The panel acknowledged that the public interest does require the panel and the NMC to consider whether the matter should be explored further but does not require the NMC to pursue factual allegations where there is no realistic prospect of success. As to whether charges 12 and 13 even if proved, would add significantly to the overall seriousness of the case, the panel took into account the charges you have already admitted and accordingly, determined that it would not.

The panel allowed the application to offer no evidence in respect of charges 12a, 12b and 13 as the NMC offer no evidence in this regard.

Decision and reasons on a further application to admit hearsay evidence of Ms 2 in respect of charge 2a

The panel heard a further application made by Ms Danti under Rule 31 to allow the written statement of Ms 2 into evidence.

Ms Danti referred the panel to relevant case law, NMC guidance and took the panel through factors it may take into account. She acknowledged that the charge is serious and if found proved, there could be adverse effects on your career. However, she submitted that Ms 2's evidence is not the sole or decisive evidence in support of the charge as the panel has had documentary evidence and heard oral evidence from Witness 4. She submitted that the other witness has been cross-examined and that the evidence of Ms 2 is merely corroborative and provides context to the charge.

Regarding the nature and extent of the challenge to the contents of Ms 2's evidence, Ms Danti referred the panel to the Case Management Form (CMF) completed by Mr Oyegoke on your behalf. She explained that the form outlines the documents that the NMC will rely

on, which included the written statement of Ms 2 along with Witness 4's references as exhibit 'LC/6'. She highlighted that the column next to it states: "*If you don't want the panel to see this document, please tell us why*" and submitted that having not filled out the column, you did not raise any objections to the statement being put before the panel. She submitted that having signed the CMF, you confirmed that you understand and have taken into account everything within it. She submitted that it was always clear that Ms 2's statement was going to be placed before the panel, that you and Mr Oyegoke have received all the documents in the exhibit bundle, and an opportunity was given to you to object to any part of it.

Ms Danti submitted that at the time of investigation of this case, Ms 2 was subject to fitness to practise proceedings and the NMC decided it was not appropriate to approach her for a witness statement. Ms Danti informed that since August 2023 Ms 2 has not been subject to any proceedings as the Case Examiners found no case to answer. Whilst she could have been contacted after August 2023, a decision was made by the NMC that this was not a proportionate measure to take given that Ms 2's evidence was not the sole or decisive evidence in respect of charge 2a, as the evidence of Witness 4, who was also a direct witness to the incident had been obtained. Ms Danti further submitted that there was no suggestion that Ms 2 had any reason to fabricate her evidence.

For all the reasons set out above, Ms Danti submitted that it is relevant and fair to admit the local statement of Ms 2 as hearsay evidence.

In response, Mr Oyegoke opposed the application and submitted that it would not be fair to admit Ms 2's hearsay evidence. He submitted that the NMC did not satisfy the principles in *Thorneycroft*. He submitted that the NMC should have taken reasonable steps to ensure the attendance of Ms 2, and whilst this was not a requirement, there was not a good reason as to why this witness was not present to give evidence at this hearing. He submitted that the NMC had had an opportunity to do so since August 2023. Further, he submitted that you would be disadvantaged by Ms 2's non-attendance as there would not

be opportunity for cross-examination. He submitted that allowing Ms 2's statement into evidence would be unfair to you, as the fact in question is disputed.

The panel heard and accepted the legal assessor's advice on the matters it should take into consideration in respect of this application.

The panel gave the application in regard to Ms 2 serious consideration. The panel considered that Ms 2's evidence was not sole or decisive for charge 2a as there was evidence from other witnesses that supported the charge. The panel took into account that Witness 4 was a direct witness of the alleged events. Also, it took into account that Nurse A was the senior charge nurse, who provided evidence that Witness 4 and Ms 2 had complained to her promptly and that they had provided statements at the time at her request. Both Witness 4 and Nurse A were cross-examined and their evidence challenged in relation to the alleged event.

The panel determined that Ms 2's evidence is capable of being corroborative but it is not the sole or decisive evidence. It also noted that Ms 2's local statement contained the sentence '*This statement is true to the best of my knowledge*' and was signed and dated by her.

The panel noted that the evidence was not initially challenged on the CMF which was completed and signed by Mr Oyegoke. However, it recognised that this evidence is now objected to.

The panel acknowledged Mr Oyegoke's submission that Ms 2 cannot be cross-examined and therefore this would be a disadvantage to you. It assessed the reason for Ms 2's non-attendance and concluded that the NMC had not taken sufficient steps to ensure Ms 2's attendance. In addition, the panel considered that the NMC should have informed you and your representative of the reason for the NMC not attempting to obtain a witness statement from Ms 2, when the NMC had taken that step in relation to Witness 4. The panel did not attach importance to the fact that no objection was raised by your

representative (when signing the CMF in December 2022) to Ms 2's local statement remaining in the exhibit bundle, as it was not consent given with full knowledge of the facts concerning Ms 2.

The panel took account that Ms 2's local statement covered the same matters and arose in identical circumstances to the local statement of Witness 4, who has attended and been cross-examined. It noted that both internal statements had been disclosed to you before the CMF of December 2022. The panel came to the view that it was plainly relevant, and also it would be fair to accept into evidence the written statement of Ms 2 and it would give what weight it deemed appropriate once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application of no case to answer

The panel considered an application from Mr Oyegoke, on your behalf, that there is no case to answer in respect of charges 2b and 10. This application was made under Rule 24(7).

In relation to this application, Mr Oyegoke referred to relevant case law. He submitted that the oral evidence from Nurse A suggests that she was not at work on 7 January 2019. Therefore, the allegation is not established as there is no evidence to support it, in fact it contradicts it. He also submitted that there is no evidence from Nurse A's three witness statements or the exhibit bundle to support the charge. He submitted that charge 10 should not be allowed to remain before the panel.

In relation to charge 2b, Mr Oyegoke submitted that although there is some evidence to support this charge, the evidence is tenuous. He submitted that Nurse A's witness statements do not mention anything about this incident. He submitted that information relating to this charge can be found in Nurse A's Informal Capability Process Timeline, dated 21 November 2018. He submitted that this evidence was double hearsay as Mr 3 was working with you and not Nurse A, that there is no evidence of a discussion between

Mr 3 and Nurse A, and it is not mentioned at all in Nurse A's oral or written evidence. He submitted that the evidence the NMC relies on in support of this charge is weak and tenuous and that the NMC had not discharged the burden of proof.

In these circumstances, Mr Oyegoke submitted that charge 2b should not be allowed to remain before the panel.

Ms Danti submitted that the panel are to consider whether there is sufficient evidence so that a properly directed panel could find a charge proved. It must not consider the weight of evidence at this stage. She submitted that it is a high bar for the panel to be satisfied that there is no case to answer.

Ms Danti informed the panel that the NMC were not making any submissions in respect of charge 10.

In respect of charge 2b, Ms Danti submitted that the exhibit referred to by Mr Oyegoke (the Informal Capability Process Timeline) is an exhibit produced by Nurse A and accepted by the panel to be her evidence in chief. She submitted that the fact the information does not appear in Nurse A's witness statement does not detract from the fact that the exhibit is evidence said to be in support of the charge. She submitted that the evidence is of an 'informal capability process timeline', which shows what you were being tasked to do in relation to issues raised. Ms Danti submitted that, in Nurse A's oral evidence, she clarified that this was supposed to be 'feedback', she explained what she expected you to do as part of your action plan and that she had not received any vocalized intentions, at the time of writing her timeline. Ms Danti submitted that there is sufficient evidence, taken at its highest, that could result in a properly directed panel to find the facts proved in charge 2b.

The panel took account of the submissions made and heard and accepted the advice of the legal assessor.

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved and whether you had a case to answer.

Charge 10

The panel noted that the NMC had no submissions to make in opposition to your application of no case to answer. The panel carefully considered all the documentary and oral evidence before it. It noted that Nurse A's written statements and exhibits do not contain information to support the charge and Nurse A's oral evidence was that she "*probably wasn't there on 7 January 2019*". Therefore, the panel was of the view that, taking account of all the evidence before it, there was not a realistic prospect that it would find the facts of charge 10 proved and it would not be safe to do so on the present evidence.

Charge 2b

The panel considered all the documentary and oral evidence before it. It had regard to the exhibit of the informal capability process timeline, which outlined what Nurse A expected you to do whilst subject to an informal capability process.

In considering Nurse A's oral evidence, the panel noted that Nurse A stated that you did not feedback and/or verbalise the care required for two patients by 14:15, which was at the time of Nurse A's writing of her note. Nurse A confirmed in her oral evidence that it was possible that you had completed this task after Mr 3 had fed back to her at 14:15, as your shift did not end until 16:30.

The panel also noted that the evidence suggests that Mr 3 was responsible for getting the feedback referred to in charge 2b and recognised that Mr 3 was not in attendance at this hearing and the NMC did not provide any evidence from Mr 3 in support of this charge.

The panel was satisfied that the evidence that you were *'unable'* to complete the task on or around 21 November 2018 was weak and tenuous. The panel determined that there was not a realistic prospect that it would find the facts of charge 2b proved and it would not be safe to do so on the present evidence.

The panel therefore found no case to answer in respect of charge 10 and charge 2b.