

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

**Substantive Hearing
Wednesday, 24 January 2024 – Wednesday, 31 January 2024
Monday, 3 June 2024 – Friday, 7 June 2024**

Virtual Hearing

Name of Registrant: Floriana Cleopatra Bizdoaca

NMC PIN 16I0107C

Part(s) of the register: Nurses part of the register Sub part 1
RN1: Adult nurse, level 1 (16 September 2016)

Relevant Location: Sutton Coldfield

Type of case: Misconduct

Panel members: John Kelly (Chair, Lay member)
Louise Poley (Registrant member)
Matt Wratten (Lay member)

Legal Assessor: John Bromley-Davenport

Hearings Coordinator: Opeyemi Lawal
Hamizah Sukiman (6 June 2024)

Nursing and Midwifery Council: Represented by Matthew Kewley, Counsel for NMC (24 January 2024 – 31 January 2024)
Represented by Alastair Kennedy, Counsel for NMC (3 June 2024 – 7 June 2024)

Miss Bizdoaca: Present and represented by Sam Smart, Counsel for Royal College of Nursing (RCN) (24 January 2024 – 31 January 2024)
Present and represented by Ryan Ross, Counsel for Royal College of Nursing (RCN) (3 June 2024 – 7 June 2024)

No Case to Answer: Charges 3a, 3b, 4a, 4b, 4c and 4d

Facts proved:	Charges 1, 2, 5 and 6
Facts not proved:	N/A
Fitness to practise:	Impaired
Sanction:	Striking-off Order
Interim order:	Suspension Order (18 months)

Decision and Reason on application on abuse of process

The panel heard an application made by Mr Smart, on your behalf, to stay the proceedings as a consequence of an abuse of process by the NMC.

At the outset of the hearing, Mr Smart submitted that the proceedings are an abuse of process as it is impossible to give you a fair hearing due to delay.

Mr Smart provided written submissions that stated:

' ...

The notice of hearing was sent on 22 May 2023 enclosing the case management form. The matter was originally listed for October 2023, however the Registrant lost her Counsel due to a clash with Crown Court matter, therefore these proceedings were adjourned. The October to January delay is no fault of the Registrant she should not be penalised for it.

Whatever the position with the October adjournment, the fact remains that the NMC's first listing for this case was over three years after the alleged incident and initial complaint. It is accepted the some of that delay was due to the Covid pandemic, however this should not affect the Registrant's right to a fair hearing.

...

Applying Dyer and Watson and Okeke v NMC, it is clear from the case law that a delay of five years is, for the purpose of NMC proceedings, on its face and without more a cause for real concern. In the Registrant's case, the delay has been three years and given the nature of the case this is a cause for concern.

In Dyer v Watson the relevant circumstances in considering the reasonableness of the delay included the importance of the matter to the Registrant, the complexity of the case, and the conduct of the parties. Clearly in this case, where

the sanction bid is strike off, these matters are of extreme importance. The case is not a complex one. The conduct of the registrant cannot be called into question. The Registrant does not suggest the Council have acted with impropriety, however the Panel would be right to question why such a simple case has taken such a long time to bring to a hearing.

As in AG Reference (No.1 of 1990) it is accepted that the Registrant needs to establish, on the balance of probabilities, that a fair trial is not possible. The guidance from the Crown Court Compendium sets out the type of prejudice the Registrant faces in this case. The passage of time will have eroded memories and made it that certain documents are no longer available.

As set out in the highlighted passage above, the delay will have affected the cogency of the evidence. Witnesses in the case will be less able to remember the details and order of events. This is especially important in relation to Allegations 1, 2, and 5 where the evidence turns on the witnesses' recollection of things seen and conversations had.

In relation to Allegations 1 and 2 the Council rely on the evidence of Ms 3. She is an eyewitness to an alleged administration of medication by force. There are to be questions asked of her positioning, the layout of rooms, her understanding (at the time) of techniques used to administer medication to non-compliant patients, her observations as to the presentation of Resident A (which is contradicted by other witnesses), her actions thereafter, and the sequence events surrounding her report and truncated employment. It is respectfully submitted that with the passage of time she will be unable to answer these questions in the level of detail required, such that her account cannot be properly tested by cross-examination and facts that may be of assistance to the Registrant may be lost.

Is it also of note that the statement of Ms 3 as presented by the Council is neither signed nor dated. There is no record before the Panel as to when this statement was signed. Whilst this could be inferred from emails (and the Council may do so) it is most likely to be an approximation. Again, this degrades the Registrant's

ability to test the reliability of the witness. The effective date of the statement is the day on which it is signed, which may be the day of the hearing.

In relation to Allegation 5, the Council rely on the statement of Ms 1. Again, this statement is neither signed nor dated. The observations above are repeated.

Further, Ms 1's evidence is pivotal in determining whether the Registrant misrepresentation [sic] with an intent to deceive the Regulator (as is the Council's case) or whether there was a misunderstanding as to the nature of the questions being asked and the answers being given (the Registrant's case). The precise wording of what was asked is to be explored, as there is a key difference in questions that might produce the answer that Ms 1's records as 'the registrant confirmed... that she currently wasn't working elsewhere'. Again, these are questions that require a level of memory of the events that cannot be expected of the witness. Therefore, the Registrant's defence cannot be properly explored with the witness.

In relation to Allegations 3 and 4 the Registrant is at a serious disadvantage. The issue here is whether the Registrant kept records accurately. The witness relied upon is Ms 2. There is a key disagreement between the Witness and the Registrant as to whether Resident A was 'end of life' and whether that affected the type of records made. It is submitted that records that may have existed were the matter listed promptly, may no longer exist given the delay. The submissions above in relation to memory also apply to Ms Wood's evidence, save for the fact that her statement is signed and dated.

Finally, the Panel should consider the effect the delay has on the Registrant's memory. The Registrant is likely to be asked questions in cross-examination about the details of a routine treatment of a patient, her record-keeping (including which pieces of information may or may not have been stored on different systems), and the details of a telephone conversation she had over three years' ago. The Panel would be correct to have concerns that the Registrant's memory

of 'everyday' matters such as these may be severely weathered, to the extent that it affects the fairness of the hearing to an unacceptable extent.'

Mr Kewley opposed this application.

Mr Kewley provided written submissions that stated:

' ...

Delay

The NMC has encountered delays in the progression of this case largely due to backlogs and the impact of the pandemic. The delays appear to have been experienced in (a) the allocation of the investigation to external lawyers (b) delays during the investigation itself in securing witness statements and obtaining documents and (c) delays in awaiting a legal review following the Case Examiners' decision to refer the case to the Fitness to Practise Committee. As the Registrant's application correctly states, by May 2023 the NMC had arranged a final hearing to take place in October 2023 but that hearing was adjourned at the request of the Registrant.

In any event, even if there has been delay, it is submitted that the panel does not need to dwell on the reasons for the delay. This is because it is not suggested by the Registrant that the NMC has acted improperly or in bad faith by, for example, deliberately failing to progress the investigation. Irrespective of the reasons for any delay, the central question for the panel to determine is whether the Registrant can now receive a fair hearing of the allegations which concern alleged events in June and July 2020.

Witness memories

The abuse of process application is advanced on the basis that due to the passage of time witnesses will be less able to remember the details of events and will be unable to answer questions. The Registrant submits that witnesses

cannot be expected to remember the events in sufficient detail such that it is impossible for the Registrant to receive a fair hearing.

The panel is invited to reject this argument for the following reasons:

- a. Firstly, the allegations relate to alleged events in June and July 2020. The time period between the index events and this final hearing is around three and a half years. It is submitted that a period of three and a half years, when placed in the wider context of time periods typically seen across all jurisdictions, is not an inordinate length of time.*
- b. Secondly, the assertion that witnesses will not be able to answer questions due to the passage of time is entirely speculative at this stage. There is nothing within the 4 witness statements to suggest that the witnesses will not be able to answer questions due to the passage of time.*
- c. Thirdly, the fact that a witness may be unable to recall a certain detail due to the passage of time is an entirely common occurrence with which the panel will be well familiar. It is for this reason that witnesses are regularly told not to guess/speculate and to simply say if they cannot answer a question due to the passage of time.*
- d. Fourthly, even if it transpires that witnesses in this case cannot recall certain details, that is simply a matter that the panel will factor into its decision on whether the NMC has discharged the burden of proof. The fact that a witness cannot recall a certain detail due to the passage of time does not render the hearing process 'unfair'.*
- e. Fifthly, the Registrant's application refers to an example direction that may be given to a jury in the Crown Court in a case involving 'substantial delay'. The existence of such directions demonstrates that a trial process is well able to deal with issues of delay and the impact on witness memories.*

Contemporaneous documents

The panel will note that witnesses Ms 3 and Ms 1 both produce near contemporaneous accounts of the events. Ms 1 local statement is dated 22 June

2020, a period of around 48 hours after the alleged incident on 20 June 2020. Ms 1's telephone note of the conversation with the Registrant on 30 July 2020 appears to have been produced on the day of the telephone conversation.

It is submitted that the existence of these contemporaneous written accounts is an important feature in this case. This is because the appellate courts have warned on multiple occasions against the dangers of relying on human memory/recollection. Near 5 contemporaneous documents written closer in time to the index events are, evidently, not affected by the passage of time.

*The seminal analysis on this issue can be found in Leggatt J's judgment in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm) (which applies directly to witness to practise tribunals – see for example Warby J in *Dutta v General Medical Council* [2020] EWHC 1974 (Admin) at [39])*

Signed witness statements

The abuse of process application places reliance upon the absence of signed witness statements from Ms 3 and Ms 1.

It is accepted that the signed versions of these witness statements were erroneously not placed into the witness statement bundle.

The signed witness statements are appended to this skeleton argument:

- *Witness statement of Ms 1 dated 24 May 2023*
- *Witness statement of Ms 2 dated 24 November 2021*
-

Both of these signed statements have been previously served on the Registrant's legal team (statement of Ms 3 was served on 3 February 2022 and the statement of Ms 1 was served on 6 June 2023).

It is submitted that the application should be refused on the basis that the Registrant has not shown that it is impossible for her to receive a fair hearing.'

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

The panel took into account both submissions and the NMC guidance DMA-4 'Abuse of Process'.

'The panel can decide there is an abuse of process if:

- *it will be impossible for the nurse, midwife or nursing associate to have a fair hearing, or*
- *continuing with the case would, in all the circumstances, offend the panel's sense of 'justice and propriety'.*

In deciding whether there has been an abuse of process which means the case should be stopped, the panel will consider whether the alleged abuse of process (such as delay, or a failure to disclose evidence) has caused serious prejudice or unfairness to the nurse, midwife or nursing associate.

In accordance with its overarching public protection objective, the panel will also consider whether there are ways of putting right the serious prejudice or unfairness, so that the nurse, midwife or nursing associate can have a fair hearing without stopping the case.'

The panel note the time taken to bring this case to a formal hearing, which should have been heard during 2023, but was delayed to 24 January 2024. The panel note that the delay between October 2023 and January 2024 was attributable to your counsel being unavailable. Whilst any delay is to be discouraged, the panel considered that the delay in this case is not excessive set against the need for thorough investigation, delays associated with the parties' diary commitments and the historic and ongoing challenges that the NMC face in their case management. These issues are not unique to the NMC and are mirrored in other similar arenas. The panel determined that the impact of the time taken to bring this matter to a formal hearing can be mitigated as set out in the following paragraphs.

The panel accepts the premise of Mr Smart's application that memories fade with time. However, in this case, the panel and parties have access to a range of contemporaneous or near contemporaneous documents, including locally made statements and records, and formal witness statements, which can be used to refresh witnesses' memories and support cross examination to test and triangulate witness recollections. This also includes the responses you made during a local interview two days after the incident. It is on such documents that the panel will principally rely, using oral evidence to test and check points of detail in them.

Whilst the panel note Mr Smart's point that the passage of time erodes memories and that certain documents may no longer be available, he did not make specific reference to what those documents might be, the extent to which they have been requested and found to be unavailable and how their absence may prejudice you.

The panel can consider and test the evidence by reference to the documents and can draw its own conclusions and apply such weight as it thinks fit, taking into account any discrepancies between contemporaneous records, witness statements and oral evidence.

In reaching its decision the panel will take into consideration that its role is to protect the public and maintain the public interest and it will be able to ensure that, as the case proceeds, these overarching objectives will be balanced appropriately against the need for you to receive a fair hearing.

The panel considered the NMC guidance DMA-4 'Abuse of Process' and determined that, in the circumstances and with the benefit of the documents on which it will rely, it will not be impossible for you to have a fair hearing and continuing with the hearing does not offend the panel's sense of justice and propriety.

Consequently, the panel determined that the application to stay the proceedings as a result of an abuse of process is rejected.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Kewley, on behalf of the NMC, to amend the wording of charges 3, 4 and 5.

The proposed amendments were to correct naming and typographical errors. In relation to charge 5, it was submitted by Mr Kewley that the proposed amendment would provide clarity and more accurately reflect the evidence, without causing any injustice to you.

“That you a registered nurse;

...

3) On or before 20 June 2020, failed to record that Resident A had on more than one occasion:

- a) indicated that they did not like soluble paracetamol ~~and required liquid paracetamol;~~
- b) spat out liquid medication.

4) On or around 20 June 2020, failed to:

- a) record in Resident A’s behavioural ~~log~~ **chart** that Resident A was agitated and/or aggressive;
- b) complete an ~~Airway, Breathing, Circulation (“ABC”)~~ chart in respect of Resident A
- c) ...
- d) ...

5) On 30 July 2020 incorrectly told the NMC, that you were not **working elsewhere longer working as a registered nurse**, when you were working at **for Absolute Care Homes (Central) Ltd.**

6) Your conduct in Charge ~~4~~ **5** was dishonest, in that you deliberately sought to mislead the NMC about your nursing practice.

AND in light of the above, your fitness to practise is impaired by reason of your misconduct. ~~in charges 1-4 and dishonesty at charges 5 and 6."~~

The panel heard submissions from Mr Smart.

Mr Smart agreed with the all the amendments apart from the proposed amendment to charge 5.

Mr Smart submitted that the amendment to charge 5 would be an injustice to you if it is agreed, as the original wording is not made out based on the evidence and would have been subject to a 'no case to answer application' at a later stage of the hearing. Mr Smart further submitted that the NMC's opportunity to change the wording to fit the evidence has now passed and that the proposed change would be fundamental adjustment to the essence of charge 5.

The panel accepted the advice of the legal assessor and had regard to Rule 28 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

'Amendment of the charge

(1) At any stage before making its findings of fact, in accordance with rule 24(1)(d) or (i), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Conduct and Competence Committee, may amend—

(a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based, unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.'

The panel noted that it has the discretion to amend the charges at any stage before making its findings on facts subject to the requirement that such amendments can be made without injustice to you.

The panel considered that the proposed amendments align charge 5 more accurately with the evidence provided to the panel and to you in advance of this hearing. The panel was of the view that the proposed amendment does not undermine your ability to test and challenge the evidence and to dispute the content of charge 5 in the course of the hearing.

The panel was of the view that the amendment can be made without injustice or unfairness to you. It was therefore appropriate to allow the amendment to accurately reflect the evidence and provide you with a fairer opportunity to answer or dispute the allegation without reference to you specifically working as a Registered Nurse.

Details of charge

That you a registered nurse;

- 1) On 20 June 2020, administered medication to Resident A by force.
- 2) On 20 June 2020, failed to treat Resident A with dignity compassion and care arising from charge 1.
- 3) On or before 20 June 2020, failed to record that Resident A had on more than one occasion:
 - a) indicated that they did not like soluble paracetamol
 - b) spat out liquid medication.
- 4) On or around 20 June 2020, failed to:

- a) record in Resident A's behaviour chart that Resident A was agitated and/or aggressive;
- b) complete an ABC chart in respect of Resident A
- c) record in Resident A's MAR chart that Resident A had rejected all or part of a 10ml dose of Diazepam;
- d) promptly record the reasons for administering a 0.5 ml dose of Midazolam;

5) On 30 July 2020 incorrectly told the NMC, that you were not working elsewhere, when you were working for Absolute Care Homes (Central) Ltd.

6) Your conduct in Charge 5 was dishonest, in that you deliberately sought to mislead the NMC about your nursing practice.

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

Decision and reasons on hearsay application to admit production statement

The panel heard an application made by Mr Kewley under Rule 31 to allow the production statement of Ms 4 into evidence. Ms 4 is not present at this hearing. Ms 4 made the NMC aware that she would not be attending this hearing in March 2023 via email to your NMC case officer. Ms 4 explained the reason for being unwilling to attend the hearing. Following further communication with the NMC during August 2023, Ms 4 again outlined her position and her reason for not attending the hearing by email. The panel had sight of both emails.

Mr Kewley invited the panel to admit Ms 4's signed production statement dated 10 January 2022 along with the document that she exhibited 'KJ1' your employment contract with Absolute Care Homes (Central) Ltd. Mr Kewley submitted that the statement and accompanying document are important because they go to the allegations raised in charges 5 and 6.

Mr Kewley referred to paragraph 4 of Ms 4's production statement which states:

'The Nurse's employment with Absolute Care Homes (Central) Ltd at Boldmere Court Care Home began on 29 July 2020. The Nurse had their three days mandatory training starting on 13 July 2020. They did not have any interaction with anyone on these days as the training room is away from the residents. The Nurse had further computer training on 30 August 2020. The Nurse had their first shift on 29 July 2020. I can confirm that this employment contract is accurate to the best of my knowledge. I attach a copy of the Nurse's employment contract.'

Mr Kewley also referred to the document KJ1, Main Terms and Conditions of employment contract with Absolute Care Homes (Central) Ltd, which you signed, in particular point 1, which states:

*'Period of probation: 9 Months
Your employment began on 29.07.2020
Your continues employment commences.....'*

This statement gives your start date at the Home, which is the same as that given in Ms 4's production statement.

Mr Kewley submitted that Ms 1 had a conversation with you on 30 July 2022 and you stated that you were not working elsewhere.

Mr Kewley submitted that it is important to identify the key dates and Ms 4's evidence simply confirms such dates. He acknowledged that Ms 4's statement and exhibited document, 'KJ1' are the sole and decisive evidence to charge 5 in relation to the dates of your employment.

Mr Smart opposed this application.

Mr Smart submitted that Ms 4's evidence is the sole and decisive evidence relating to charge 5 and 6 and that, if admitted as hearsay evidence, Ms 4's statement and associated exhibit cannot be tested by cross-examination.

Mr Smart told the panel that you attended a non-obligatory induction at Boldmere Court Care Home on 29 and 30 July 2020 and completed mandatory training on 13 July 2020.

The panel heard and accepted the legal assessor's advice.

The panel considered the NMC guidance, Rule 31(1) NMC Fitness to Practise Rules 2004 and the advice of the legal assessor who cited the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin)* and *Mansaray v NMC [2023] EWHC 730 (Admin)*.

Rule 31(1) NMC Fitness to Practise Rules 2004 states:

'Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings.'

Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin) sets out the following factors to be considered when determining the admissibility of hearsay evidence. The panel are required to perform a careful balancing exercise. In particular the panel needs to consider the following matters:

- Whether the statement is the sole and decisive evidence in support of the charges;
- The nature and extent of the challenge to the contents of the statement;
- Whether there was any suggestion that the witness had reason to fabricate their allegation;
- The seriousness of the charge, taking into account the impact which adverse findings might have on the registrant's career;

- Whether there was a good reason for the non-attendance of the witness;
- Whether the regulator had taken reasonable steps to secure the witness's attendance; and
- Whether the registrant did not have prior notice that the witness statement would be read.

The Thorneycroft principles were recently reiterated in the case of *Mansaray v NMC* [2023] EWHC 730 (Admin). In which Stacey J said:

'The admission of hearsay evidence requires a consideration carefully in line with Thorneycroft principles, the quality of the evidence, how it was obtained and the safeguards in place to minimise the handicap to the registrant inability to cross examine the maker of the statement. Where such evidence is the sole and decisive evidence requires a panel to make a careful assessment weighing up the competing factors. The panel must be satisfied that the evidence is demonstrably reliable or there is some means of testing its reliability.'

Having regard to the content of the statement of Ms 4 and its associated exhibit, the panel determined that they are relevant to charges 5 and 6 this case.

The panel noted that the parties are agreed the evidence of Ms 4 is the sole evidence in determining when your employment at Boldmere Court Care Home commenced.

The panel noted that, from submissions made, it is likely that Mr Smart will, on your behalf wish to challenge the evidence of Ms 4. Such challenges are likely to be related to facts around the dates on which you commenced your employment with Boldmere Court Care Home and whether the nature of your attendance at Boldmere Court Care Home constituted employment. The extent of any challenge, it seems may relate to factual matters drawn from business records and not to matters that Ms 4 witnessed.

The panel has no information before it to suggest that Ms 4 had any reason to fabricate her evidence and noted that it is confined to factual matters around your employment date based on company records.

The panel recognises the seriousness of the charge that this application relates to and the impact that adverse findings may have upon you, particularly in light of the NMC's indication that it will seek a striking-off order should any or all of the allegations be found proved and your fitness to practise be found to be impaired.

The panel considered the reason for Ms 4's non-attendance, having had sight of two emails outlining her position. The panel considered Ms 4's clear and cogent reason for non-attendance and found it to be acceptable.

The NMC did not take any steps to secure Ms 4's attendance at this hearing after August 2023 based on her categorical refusal to attend and the NMC's understanding that it had been agreed at a case management conference held in December 2023, that her evidence could be read in her absence, thereby providing you with notice that the evidence was to be produced as hearsay and requiring no further steps from the NMC. However, your representative disputed the aforementioned assertion by the NMC around this agreement at the case management conference. In the absence of any other information the panel noted the submissions of both parties on this point, but was unable to determine whether such an agreement had indeed been reached, the extent to which steps had been taken to secure Ms 4's attendance and whether you had been given prior notice of the potential introduction of hearsay evidence.

In balancing all of these factors the panel also considered the quality of the evidence as indicated by the case of *Mansaray*. The panel noted that Ms 4's statement merely produces an exhibit 'KJ1' which is your employment contract. The statement does not make any reference to any wider misconduct or opinions on any other matters pertaining to the case. It is administrative in terms of its quality. The panel note that exhibit 'KJ1' is a document that you signed on 19 August 2020 to which you were a party, had prior knowledge of and were aware of the intention to adduce it in evidence in this hearing. Consequently, you will have the opportunity to give evidence and be cross-examined on the exhibit 'KJ1', in the course of this hearing and offer any challenge to its contents that you wish. The panel therefore determined that admitting this evidence as hearsay would be fair in the circumstances.

Background

You were referred to the Nursing and Midwifery Council in July 2020. At the time the allegations incidents occurred you were employed as a nurse at the Hafod Nursing Home (The Home). The Home is a 29 bedded nursing home caring for residents with both nursing and dementia related needs. There would typically be one nurse on duty during a day shift supported by nine care assistants.

The alleged incident on 20 June 2020 concerns Resident A, who had a diagnosis of dementia. Resident A was bed bound most of the time and was also approaching end of life and had in place prescribed end of life medication.

Resident A frequently demonstrated behaviours of restlessness and agitation. Staff at The Home knew how to de-escalate Resident A if they were agitated. If it was not possible to calm them down by sitting with them, diazepam would be administered which had been prescribed to Resident A for use in such circumstances.

Application of no case to answer

The panel considered an application from Mr Smart under Rule 24(7) that there is no case to answer in respect of charges 3 and 4 in their entirety.

Mr Smart submitted that the NMC have not provided sufficient evidence for the charges to stand.

Mr Smart took the panel through each of the charges.

Charge 4d

On or around 20 June 2020, failed to:

- d) promptly record the reasons for administering a 0.5 ml dose of Midazolam;

Mr Smart submitted that the evidence suggests that you did in fact record the reasons for administering a 0.5 ml dose of Midazolam in Resident A's medication report. During Ms 2's evidence she agreed that this information was recorded and did not provide any evidence that it was not done promptly. Mr Smart submitted that the evidence no longer supports the charge.

Charge 4c

On or around 20 June 2020, failed to:

- c) record in Resident A's MAR chart that Resident A had rejected all or part of a 10ml dose of Diazepam;

Mr Smart referred the panel to the Home's medication policy which sets out the responsibilities of Nursing staff for recording medication refusals and states that '*this record must be entered into the individual's care documentation*'. Mr Smart submitted that you did record Resident A's medication refusal on the administration history for Resident A – Diazepam oral solution.

Charge 4a

On or around 20 June 2020, failed to:

- a) record in Resident A's behaviour chart that Resident A was agitated and/or aggressive;

Mr Smart told the panel that there is only a failure to do something when there is a requirement to do it. Mr Smart submitted that there was not a procedure or policy for recording behaviours. Mr Smart further submitted that as there is no defined standard, there is no evidence to support this charge.

Charge 4b

On or around 20 June 2020, failed to:

- b) complete an ABC chart in respect of Resident A

Mr Smart submitted that this charge is a duplication of charge 4a and should fall away based on the reasons stated for charge 4a.

Charges 3a and 3b

On or before 20 June 2020, failed to record that Resident A had on more than one occasion:

- a) indicated that they did not like soluble paracetamol
- b) spat out liquid medication.

Mr Smart submitted that this charge relates to Resident A's actions on more than one occasion and your alleged failure to record those actions. However, he submitted that the evidence does not show that Resident A acted in the way described or that you failed to make appropriate records on more than one occasion.

In response to Mr Smart's submissions, Mr Kewley submitted the following, in relation to charges 3 and 4, on behalf of the NMC.

Charges 3a and 3b

Mr Kewley acknowledged that, according to Ms 2's evidence, the matters referred to in these charges can be recorded in various places within a resident's overall care documentation. He further acknowledged that the NMC has not provided the panel with Resident A's full care documentation.

Mr Kewley further submitted that given Ms 2 stated that she did not conduct an historic audit of Resident A's care documentation, he does not resist the submissions of no case to answer in relation to these charges.

Charge 4b

On or around 20 June 2020, failed to:

- b) complete an ABC chart in respect of Resident A

Mr Kewley submitted that the NMC does not wish to proceed with this charge because it is a duplication of charge 4a.

Charge 4a

On or around 20 June 2020, failed to:

- a) record in Resident A's behaviour chart that Resident A was agitated and/or aggressive;

Mr Kewley submitted that there is a case to answer on the facts of this allegation. He submitted that, during your internal investigation meeting on 22 June 2020, you stated that you knew of the behaviour chart and could offer no explanation as to why you did not make an entry to record Resident A's behaviour, on 20 June 2020. However, he acknowledged that whilst the evidence indicates that there was no entry from you, there is an entry from another colleague. Mr Kewley further submitted that while nurses have a duty to keep accurate records, he stated that there was not a 'gaping hole' in terms of safeguarding Resident A, as an accurate note in the record had been made by your colleague. He went on to say in terms of misconduct another colleague such as a doctor would have been able to see this record thus providing a layer of safety for Resident A.

Charge 4c

On or around 20 June 2020, failed to:

- c) record in Resident A's MAR chart that Resident A had rejected all or part of a 10ml dose of Diazepam;

Mr Kewley submitted that Resident A's electronic MAR chart did not record refusal of the 10ml dose of Diazepam. He however acknowledged Ms 2's evidence that there was an issue with the electronic 'drop down menu' in place at the time. He further acknowledged that you had recorded the medication administration as being 'not effective', questioning whether it was an error of form or substance, and the panel would need to consider whether this is sufficiently serious if proved to amount to misconduct.

Charge 4d

On or around 20 June 2020, failed to:

- d) promptly record the reasons for administering a 0.5 ml dose of Midazolam;

Mr Kewley submitted that there is a case to answer on the facts of this allegation. He pointed out that the evidence indicates that you recorded administration of medication to Resident A, 3 hours after doing so. However, he acknowledged that in Ms 2's oral evidence she stated that recording an entry in care documentation plan several hours later is not necessarily incongruent with a nursing home environment but rather more dependent upon the shift or activity that the nurse would have been engaged in. Mr Kewley submitted that it was up to the panel to decide whether this could be considered as sufficiently serious to amount to misconduct.

Following Mr Smart's submissions on no case to answer in relation to charges 3 and 4 and Mr Kewley's response, there was further disclosure of documents by the NMC, as follows:

- an email dated 7 August 2020, from the Home Manager at Boldmere Court Care Home (Boldmere), to the NMC. This identified that you commenced working for Boldmere on 27 June 2020 and stated that you disclosed that you had been referred to the NMC during the interview process for the role at Boldmere.
- An employment details form dated 4 August 2020 which appears to be signed electronically by you and sent to the RCN and onwards to the NMC on 5 August 2020. This included details of your current employer as being Boldmere, without reference to a starting date.

Subsequently, Mr Smart made an additional submission of no case to answer in relation to charges 5 and 6.

Charge 5 and 6

5) On 30 July 2020 incorrectly told the NMC, that you were not working elsewhere, when you were working for Absolute Care Homes (Central) Ltd.

6) Your conduct in Charge 5 was dishonest, in that you deliberately sought to mislead the NMC about your nursing practice.

Mr Smart submitted that now that the panel have more evidence, no reasonable panel would find that you acted dishonestly. He submitted that the email points away from dishonesty. He submitted that the only motivation for you not informing the NMC of your employment at Boldmere when you were called by Ms 1 on the 30 July 2020, could be because you did not want your employer to find out [from the NMC] about the NMC investigation. However, it is clear from the email from the Home Manager dated 7 August 2020 that you informed Boldmere of the NMC investigation during the interview process. In light of this, Mr Smart submitted that that the NMC's evidence is contradictory and fatally undermines the allegation.

Mr Smart submitted that we have inconsistent dates from the NMC as to when your employment with Boldmere started.

Mr Smart further submitted that the NMC's case is now so confused as to the start date that no proper finding of fact can be made. Mr Smart invited the panel to find that there is no longer a case to answer on allegations 5 or 6.

Mr Kewley responded to Mr Smart's submissions in relation to charges 5 and 6.

Mr Kewley submitted that it could be dishonest to tell your regulator you are not working when the evidence suggests that you were in fact working as a nurse at Boldmere and the email from the Home Manager confirms that you were.

Mr Kewley submitted that the fact that you made a disclosure to Boldmere about the NMC referral during the interview process would appear to weaken the NMC's case in relation to charges 5 and 6. He added that, if there was a gain to be had from being dishonest to the NMC, it is difficult to see what that would have been if Boldmere already knew about the NMC referral. He stated that people act dishonestly for all sorts of reasons and that there is no requirement for there to be a specific gain in a specific case.

Mr Kewley submitted that whilst the evidence weakens the NMC case in relation to charges 5 and 6, the panel may feel that on one view of the evidence there remains some support for them.

Mr Kewley submitted that the decision on no case to answer in relation to charges 5 and 6 is for the panel's professional judgement.

Decision and reasons on application of no case to answer

The panel took account of the submissions made by Mr Smart and Mr Kewley and heard and accepted the advice of the legal assessor. The panel reminded itself of guidance on 'No case to answer' within NMC guidance DMA6 last updated on 1 July 2022 as follows:

'There may be situations where, at the close of our case, the nurse, midwife or nursing associate feels that we just haven't put forward enough evidence to mean they still have a case to answer.

There will be no case for a nurse, midwife or nursing associate to answer where, at the close of our case, there is:

- 1. no evidence*
- 2. some evidence, but evidence which, when taken at its highest, could not properly result in a fact being found proved against the nurse, midwife or nursing associate, or the nurse, midwife or nursing associate's fitness to practise being found to be impaired.*

The question of whether there is a case to answer turns entirely on our evidence. Evidence which might form part of the nurse, midwife or nursing associate's case will not be taken in to account.

Where the strength or weakness of our evidence depends on the weight it should be given, a submission that there is no case to answer is likely to fail. That issue is best considered after all the evidence has been heard.'

The panel considered the application carefully in respect of each of the charges.

The panel had regard to all the evidence adduced by the NMC, both written and oral. The panel was mindful of the test in considering such applications, as set out in the judgment of Lord Lane LCJ in *R v Galbraith [1981] 1WLR 1039*.

The panel was mindful that it was not deciding whether any of the disputed charges were proved, only whether, applying the Galbraith test to the NMC evidence, it could find the charges proved and if so, whether the allegations could amount to misconduct.

Charge 3a and 3b

The panel noted that the stem of charge 3 refers to events that occurred on more than one occasion but that it was only provided with evidence of one specific incident. The panel accept submissions by Mr Smart and note that Mr Kewley does not resist those submissions, on behalf of the NMC. Consequently, the panel determined that there was no evidence of the events referred to in charge 3 occurring on more than one occasion and found no case to answer.

Charge 4a

The panel noted that you did not make an entry on Resident A's behavioural chart to record her agitated and aggressive state and that during your internal investigation meeting of 22 June 2020 you acknowledged that you knew of the behavioural chart and could not explain why you failed to make an entry. There was an entry made by a colleague. Consequently, the panel considered that there is evidence available for there to be a case to answer.

However, having regard to the guidance the panel determined that, even if found proved on the facts, this charge would be insufficiently serious to amount to misconduct. In relation to charge 4a therefore, the panel determined that there is no case to answer.

Charge 4b

The panel took into account submissions from both parties. It accepted that this charge duplicates charge 4a, and therefore determined that there is no case to answer in relation to charge 4b.

Charge 4c

The panel noted evidence that the refusal of medication by a resident is, according to policy to be recorded in the relevant care documentation, not simply limited to the MAR chart. It also noted and accepted Mr Smart's submission that you in fact recorded Resident A's refusal of Diazepam on the 'administration history for Resident A – Diazepam oral solution'. The panel also noted the reference to Resident A's refusal in the electronic MAR chart albeit the detail was restrained by a limited drop-down menu available to you.

The panel determined that having regard to the record of refusal that you made, combined with the limitations of the electronic MAR chart, there is no case to answer in relation to charge 4c.

Charge 4d

The panel had regard to the administration history for Resident A – Midazolam, which for the 20 June 2020 shows a record of the medication been administered to Resident A because of agitation. The panel considered whether a delay of three hours between administration of the medication and a record being made of the reasons for it could be regarded as prompt. The panel heard evidence from Ms 2 who said that a three-hour delay would not be regarded as prompt but acknowledged that it could be a reasonable time delay in certain circumstances.

Consequently, the panel considered that there is no case to answer in relation to charge 4d.

Charge 5 and 6

The panel had regard to submissions of both parties in relation to charge 5. It heard evidence from Ms 1, an NMC employee, that on 30 July 2020 you incorrectly told her that you were not working for [anybody else]. The panel also saw a contemporaneous

record of that conversation. According to your own evidence, that conversation took place a short time after you had completed a shadowing shift at Boldmere. Other documents seen by the panel raise the possibility that you were employed by Boldmere at the latest by 29 July 2020. The panel note Mr Smart's submission relating to your possible motivation for misleading the NMC on the 30 July 2020 and the likelihood of having been dishonest. It also took into account Mr Kewley's acknowledgments on behalf of the NMC that documents disclosed during the course of the hearing weakened the likelihood of you having acted dishonestly.

However, the panel determined that it does have evidence that you may have given incorrect information to Ms 1 during your telephone conversation and sufficient information on which it could consider your motivation and whether you were dishonest. Consequently, the panel determined that there is a case to answer in relation to charges 5 and 6.

The panel was of the view that, taking account of all the evidence before it, there is no case to answer in relation to charges 3a, 3b, 4a, 4b, 4c and 4d.

Decision and reasons on facts

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Kewley on behalf of the NMC and by Mr Smart, on your behalf.

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

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

- Ms 1: Senior Screening Case Officer at NMC
- Ms 2: Clinical Lead at the Home
- Ms 3: Cleaner at the Home

The panel also heard evidence from you under affirmation.

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

The panel bore in mind that you are of previous good character and bore this in mind when considering your credibility as a witness whilst reminding itself that there was no burden on you to prove your case. Your good character is also relevant when considering whether it is likely you would behave as alleged.

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

Charge 1

“On 20 June 2020, administered medication to Resident A by force.”

This charge is found proved.

In reaching this decision, the panel took into account documentary and oral evidence from Ms 3 including local investigation notes and NMC witness statement. The panel also took into account your NMC witness statement and oral evidence.

In Ms 3’s local statement dated 22 June 2021 (two days after the incident), she stated:

‘I then seen Flo go into Resident A’s bedroom and attempting to give Resident A the liquid medication was refusing and attempted to push Flo away, I then seen

Flo hold Resident A's hand and re attempt. was still refusing and then Flo used the palm of her hand to push Resident A's head back for administer the liquid medication. Resident A was still refusing at that point Flo pinched Resident A's nose and pulled her nose up so her head went back. The liquid was around Resident A's mouth, Flo cleaned her mouth and I heard Flo say 'you will have to have an injection now'

In Ms 3's NMC witness statement, she stated:

'I did not see the Nurse come back to Resident A's room with an injection. I never saw the Nurse successfully administer the liquid medication as it appeared to be all down Resident A's chin. I do not recall whether the Nurse cleaned Resident A before leaving the room.'

The panel also had regard to the witness statement of Ms 2, who recounts receiving a telephone call from Ms 3 on Monday 22 June 2020. The telephone call was made by Ms 3 to report events that had allegedly taken place on 20 June 2020 and are now the subject of charges 1 and 2. Ms 2 said

'Ms 3 alleged that the Nurse had administered medication to Resident A by holding their arms down, pushing their head back, and when that did not work by pinching Resident A's nose and pulling it up so their head went back.'

During Ms 3's oral evidence, she was consistent with her local statement provided 22 June 2020, at the earliest opportunity after the alleged incident, Ms 2's account of their telephone conversation on the same day and Ms 3's statement to the NMC.

The panel noted that during your internal investigation meeting on 22 June 2020, the following conversation took place:

'Q – How did you give Resident A her medication

You – In the mouth

Q – *Who was with you*

You – *No one*

Q – *Did she comply with having it*

You – *Sometimes appears she took it but she spit it out, say I don't want it*

Q – *Did you have to hold he[sic] hands down to give it*

You – *No why*

Q – *as we are fully aware at this point is is[sic] agitated*

You – *No*

Q – *So you are saying that Resident A was lashing out with the people making he lay there when you gave her diazepam*

You – *She put her hand like that*

Q – *like what*

You – *Infront of her mouth but drank it and after she say I don't like it the taste*

Q – *Resident A told you she did not like the taste*

You – *Yes...*

Q – *So the allegation is that you administered medication to Resident A by holding he[sic] arms down and then you used you[sic] hand to push he[sic] head*

back when this did not wok[sic] you pinched her nose pulling it upwards so her mouth opened.

You – Why should I do this.'

During your oral evidence you said the following:

'You – She [Resident A] was pushing with the hands. She was agitated, screaming and shaking the head...with the hands all over the place.

Mr Smart – ...you say she held your hands?

You - Yes.

And later during cross examination:

Mr Kewley - So the only physical contact you had was helping her sit up and then cleaning the mouth and the chin, correct?

You - It's that's correct [sic]. Yes, I did'

The record of the telephone call between yourself and Ms 1 at the NMC dated the 30 July 2020 shows that during the call, you said that you:

'...explained that [you] did not rough handle this resident but rather she [Resident A] was displaying challenging behaviours having spat out her medication to which [you were] wiping her mouth and gently holding her still as she was attempting to jump around.'

The panel was mindful that during your internal investigation meeting on 22 June 2020, your responses were potentially constrained to a degree by the questions that you were asked. However, the substance of the allegation was put to you, and it is apparent from your responses that you claimed there was minimal physical contact between yourself

and Resident A as you attempted to administer medication. By contrast your later descriptions of the incident given in oral evidence and in the telephone conversation with Ms 1 of the NMC are inconsistent with the contemporaneous account that you gave. Later accounts of the incident evidence a higher level of physical contact with Resident A.

The panel considered your evidence that potentially, Ms 3 embellished her evidence in relation to charge 1 as a consequence of you having admonished her during the shift of the 20 June 2020 for taking inappropriate smoking breaks. In her evidence, Ms 3 refuted this suggestion, pointing out that she never had smoked and simply ignored what you had said to her on that basis. Both you and Ms 3 agreed that this was the first day that you had met. The panel considered it implausible that Ms 3 would fabricate such an allegation simply on the basis of a conversation with you which in evidence, she firmly said had no impact on her.

Having taken into account all of the evidence, the panel concluded that, on balance of probabilities it accepted the evidence of Ms 3 and rejected your version of events. This was based on the consistency of Ms 3's evidence in comparison to your own and also the panel's assessment of the impact that the incident had on Ms 3 in that she was reluctant to return to work at the Home and subsequently resigned as a consequence of it.

The panel found this charge proved on the balance of probabilities.

Charge 2)

“On 20 June 2020, failed to treat Resident A with dignity compassion and care arising from charge 1”.

This charge is found proved.

In reaching this decision, the panel took into account the evidence in relation to charge 1 and your oral evidence.

During your oral evidence you acknowledged that force should not be used when administering medication to Residents. The panel noted its finding of fact in relation to charge 1 above that you administered medication to Resident A by using force. It was of the view that by doing so you failed to act towards Resident A in a way which was compassionate, preserved Resident A's dignity and offered an appropriate standard of care.

The panel therefore found this charge proved on the balance of probabilities.

Charge 5)

“On 30 July 2020 incorrectly told the NMC, that you were no longer working as a registered nurse, when you were working at Absolute Care Home”.

This charge is found proved.

In reaching this decision, the panel took into account all of the documentary evidence before it, the written and oral evidence from Ms 1 and the written evidence of Ms 4. The panel also took into account your oral evidence.

Ms 1, a Senior Screening Case Officer for the NMC, gave written and oral evidence that she telephoned you on 30 July 2020 to introduce herself as the person handling the NMC referral from the Home. Ms 1 also produced a written record of the telephone conversation made immediately afterwards which stated:

‘[You] has confirmed that [you are] currently [not] working elsewhere.’

This is not disputed by you.

The panel went on to consider whether this was an incorrect statement.

You told the panel that, having applied for the job at Boldmere, you attended some induction and training days during July 2020 for which you were not paid. You said that you were called to attend Boldmere on 29 July 2020 for further induction material, including details of your shift rotas going forward and that on the following day, 30 July 2020 you attended a shadowing shift at Boldmere for which you were paid, with another shift scheduled for the 31 July 2020. You told the panel that having completed your shift on 30 July 2020, you returned to your car and at that point received the telephone call from Ms 1 and during that conversation you informed Ms 1 that you were not working. You told the panel that having completed your shift you made a personal decision not to return to Boldmere the following day. You acknowledged that at the point when you were called by Ms 1 you had not communicated that decision to Boldmere. You added that, around 10 minutes after the call with Ms 1 you telephoned the clinical lead at Boldmere to inform them of your decision. However, during that call you changed your mind and decided that you would continue your employment at Boldmere and return the next day for your scheduled shift, which you did. You acknowledged that you made no effort to correct what you had said to Ms 1.

The panel had sight of a document entitled 'Main Terms and Conditions of employment contract with Absolute Care Homes (Central) Ltd'. This document stated:

'Period of probation: 9 Months

Your employment began on 29.07.2020

...'

You signed this document and dated it 19 August 2020 and acknowledged in oral evidence that you had read the document before signing.

The panel had regard to two emails sent by the Home Manager at Boldmere to the NMC. The first dated 7 August 2020 stated that your employment at Boldmere commenced on 27 July 2020 and that your role was as a nurse working 36 hours per week. The Home Manager also said that when interviewed for the role at Boldmere you disclosed to him that you had been referred to the NMC as a consequence of allegations raised at the Home. The second email dated 13 May 2021 stated that your

employment began on 29 July 2020 and you were contracted to work 33 hours per week.

The panel also had regard to a personal contact and employment details form sent by you to the RCN on 4 August 2020 and onwards from the RCN to the NMC the following day. In this form you made a declaration of your employment at Boldmere.

The panel considered that the contemporaneous documents and other evidence shows that you were employed at Boldmere by the 29 July 2020 at the latest. It noted the slight difference in start dates between the two emails from the Home Manager at Boldmere to the NMC but did not consider this significant.

You told Ms 1 that you were not working. You informed the panel that the reason for making that claim was because in the short window of time between your shift finishing and receiving a call from Ms 1 you decided that you were not going to return to work at Boldmere. You told the panel that 10 minutes after the call with Ms 1, you contacted the clinical lead at Boldmere to advise them of your decision and during that conversation reversed your decision. The panel rejects your explanation as being implausible in the circumstances and determined that you provided incorrect information during the call with Ms 1.

The panel determined that you were employed at the time of the phone call and found this charge proved.

Charge 6)

“Your conduct in Charge 5 was dishonest, in that you deliberately sought to mislead the NMC about your nursing practice”.

This charge is found proved.

The panel first considered what took place in terms of your telephone call with Ms 1 on 30 July 2020 as set out in its determination on charge 5 above.

The panel went on to consider what was your knowledge and belief around your employment status at the time of the telephone call with Ms 1. Your position is documented above in the panel's decision on charge 5.

Again, the panel took into account the contemporaneous evidence around your employment at Boldmere. The panel determined that in relation to charge 5 you were employed at Boldmere at the latest by 29 July 2020.

In considering whether your account reflects your genuinely held belief as to your knowledge and understanding at the time, the panel considered the following.

- The panel noted that you did not notify Boldmere that you were intending to resign at the conclusion of your shift on 30 July 2020.
- The panel noted that you only communicated your decision not to return to Boldmere following the conversation with Ms 1.
- During the conversation with Ms 1, you made no mention of any trial shifts or any steps you had taken to secure employment despite being asked whether you were working for anyone.
- You signed an employment contract which stated that your start date was 29 July 2020 and you told the panel that you had read it before signing.

In considering your subjective mindset at the time, the panel took into account Mr Smart's submission on your behalf relating it to any potential motivation for you to act dishonestly in communicating with Ms 1. Mr Smart submitted that the only possible motivation for you to tell Ms 1 that you were not working when in fact you were, was to avoid your new employer, Boldmere becoming aware of the NMC referral from the Home. He submitted that the email from the Home Manager at Boldmere sent to the NMC on 7 August 2020 undermines such motivation because the Home Manager reports that you informed him of the referral during the interview process for the job at Boldmere. The panel considered that this may not be the only motivation for you to give incorrect information about your employment status. For example, you may have been content for Boldmere to know of your NMC referral but for reasons yet unclear did not

want the NMC to know of your new employment at Boldmere. Therefore, the panel rejected Mr Smart's submission on this point.

The panel also considered your subjective mindset at the time in the context of you having sent a 'personal contact and employment details form' to the NMC via the RCN on 4 August 2020. In considering the possibility that you acted dishonestly during your conversation with Ms 1 on 30 July 2020, the panel noted that this document effectively corrected the position that you advanced to Ms 1, albeit four days after the conversation took place. Given the direct question asked of you by Ms 1 as a representative of your regulator, your response and what you claim to have been a change of mind very soon afterwards, it might have been expected that you would seek to correct what you said as soon as possible. Consequently, the panel gave limited weight to this document in considering your genuinely held belief at the time and therefore rejected Mr Smart's submission on this point.

Having regard to all of the evidence and circumstances, the panel conclude that your explanation of a genuinely held belief that you were not employed by Boldmere during the short period of the telephone call with Ms 1 through to your change of heart a short time later to be implausible and aimed at navigating through the evidence as it stands. The panel concludes that you knew you continued to be employed by Boldmere, having commenced work there on 29 July 2020, when you spoke to Ms 1.

Having concluded that you knew what you were saying was not true, the panel considered whether what was done was dishonest by applying the objective standard of ordinary, decent people and applying those standards, it is satisfied that your beliefs were dishonest.

Therefore, the panel found this charge proved on the balance of probabilities.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether your

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

Submissions on misconduct and impairment

On behalf of the NMC, Mr Kennedy invited the panel to take the view that the facts found proved amount to misconduct. Mr Kennedy referred the panel to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015)' (the Code). He identified the specific paragraphs of the Code which you breached such that your actions amount to misconduct. He identified paragraphs 1.1, 1.2, 2.5, 2.6, 3.2, 4.1, 17.1, 20.1, 20.2, 20.3 and 20.5 of the Code.

Mr Kennedy submitted that your actions at Charges 1 and 2 were serious as they involved a vulnerable resident and exposed the resident to a risk of physical and psychological harm. Mr Kennedy submitted that you had worked in the Home for over a year, and you were fully aware that Resident A displayed agitation as part of her routine behaviour. He further submitted that your use of force against an elderly, frail resident is abhorrent. However, he acknowledged that your actions could be considered a one-off incident on a single shift.

In relation to Charges 5 and 6, Mr Kennedy submitted that honesty would have been the simplest and most obvious course of action, yet you chose to lie to your professional regulator and that is extremely serious.

Mr Kennedy submitted that your behaviour fell well below the standard expected of a nurse and was sufficiently serious to amount to misconduct.

Mr Kennedy 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 includes the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. He made reference to the case of

Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant [2011] EWHC 927 (Admin).

Mr Kennedy submitted that you have not provided any evidence to show that you have insight into your actions and without insight, a risk of repetition remains.

In relation to Charges 1 and 2 relating to your behaviour towards Resident A, Mr Kennedy acknowledged that the issues raised are remediable and you have been working unrestricted since the events took place. Mr Kennedy submitted that you have provided reflective pieces but questioned whether you had shown insight into the effects of your actions on Resident A and their loved ones. He further submitted that, in the absence of sufficient insight, a risk of repetition remains. Mr Kennedy referred the panel to the training certificates that you provided. He acknowledged that these are of some relevance, but they do not sufficiently address the issues identified in this case.

With regard to Charges 5 and 6 on dishonesty, he invited the panel to consider whether, given your lack of insight, that your default position when under stress would be to act dishonestly in the future.

Mr Kennedy submitted that a finding of no current impairment would send out a message that it is acceptable to behave in the way that you did. He submitted that a finding of current impairment is necessary in order to protect the public, uphold confidence in the NMC as a regulator, protect the reputation of the profession and maintain proper standards in the profession.

On your behalf, Mr Ross acknowledged that, given its findings on facts, a finding of misconduct and impairment was inevitable, and that you accepted that.

In relation to Charges 1 and 2, Mr Ross submitted that the charges were serious, and that force was used against a vulnerable patient, namely Resident A. Whilst emphasising that this was not a criticism of Resident A, he submitted that they displayed challenging behaviours, in what was a stressful situation for you as the only

nurse on shift. Mr Ross submitted that you accept that you could have done better during the interaction with Resident A.

In relation to Charges 5 and 6 relating to dishonesty, Mr Ross accepted that the matters raised were serious. However, he pointed out to the panel that not all dishonest actions were equally serious, and he directed the panel to relevant NMC guidance. Mr Ross pointed out that your dishonesty was a one-off event and out of character and whilst you acknowledged there was a personal gain, it was short lived as you corrected your position with the NMC five days later. He said that your dishonesty was not complex in nature and sits at the lower end of the spectrum. Mr Ross made a distinction between your clinical and professional practice, and he submitted this act of dishonesty was not related your clinical practice.

With regard to remediation, Mr Ross referred the panel to the training certificates you have provided as evidence of strengthened practice. He took the panel through some of those. Mr Ross submitted that the incident was almost four years ago, and you have been working in the healthcare profession both in the UK and now in Italy throughout that time without any challenges to your professional practice.

Mr Ross also referred the panel to the testimonials and supervision records submitted on your behalf. Again, he took the panel through some of the testimonials, which identified an '*embarrassment of riches*' in terms of positive comments about your professionalism and good conduct.

Having regard to your insight and remediation, Mr Ross invited the panel to think carefully about the risk of your actions being repeated and said that the panel may consider that risk to be low, in all of the circumstances.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

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

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

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

The panel was of the view that your actions amounted to breaches of the Code and fell significantly short of the standards expected of a registered nurse. Specifically, you breached the following paragraphs of the Code:

'1.1 treat people with kindness, respect and compassion

1.2 make sure you deliver the fundamentals of care effectively

2.5 respect, support and document a person's right to accept or refuse care and treatment

2.6 recognise when people are anxious or in distress and respond compassionately and politely

3.2 recognise and respond compassionately to the needs of those who are in the last few days and hours of life

4.1 balance the need to act in the best interests of people at all times with the requirement to respect a person's right to accept or refuse treatment

17.1 take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse

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

20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress.'

The panel acknowledged that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that your actions were sufficiently serious to amount to misconduct. You used force to administer medication to a vulnerable, elderly patient who was suffering from dementia and approaching end of life. You also gave misleading information and were dishonest in response to a direct question from your regulator, such that it had the potential to undermine the NMC discharging its functions.

The panel found that your actions fell well short of the standards expected of a registered nurse and amount to serious misconduct.

Decision and reasons on impairment

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

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

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.'*

The panel determined that all four limbs of *Grant* are engaged in relation to your actions in this case.

You put Resident A at risk of physical and psychological harm by using force to administer medication. Your misconduct, both in relation to your behaviour towards Resident A and in being dishonest with your regulator, brought the nursing profession into disrepute. You breached fundamental tenets of the nursing profession, in relation to your dishonesty and failing to act with compassion towards, in this case, a vulnerable resident. You acted dishonestly in your conversation with your regulator on 30 July 2022.

Regarding insight, the panel, bearing in mind that the incident took place four years ago and you have practised in the intervening period, considered that you show very limited insight into your actions. The panel had sight of your reflective piece, testimonials and references, particularly those highlighted by Mr Ross during his submissions. The panel was of the view that your reflections, including the NMC reflective account form that you submitted, do not address the serious issues raised in the charges found proved in this case. The panel had no information about how you have reflected on what led you to act in the way you did, or what steps you have in place to ensure that your behaviour is not repeated in the future. The panel accepted your right to defend yourself and to maintain your position. However, it considered that you could have addressed the matters found proved in this case from your own perspective in terms of how the overall circumstances came about, and your thoughts on preventing a recurrence. The panel also considered that you failed to reflect on how your actions impacted Resident A, their family and your colleagues as well as the reputation of the nursing profession.

The panel concluded that your insight is very limited.

With regard to remediation, the panel considered the evidence before it in determining whether or not you have taken steps to strengthen your practice. The panel took into account the training certificates and reflections that you provided. The panel determined that the online training certificates were limited, as only some, for example those relating to treating people with dignity and compassion, were of relevance. Of the relevant training, the panel determined that the courses were not sufficiently in-depth to address the concerns identified in this case, as they were short, online courses and the panel had no information available as to how you have applied the learning to the circumstances of the charges found proved in this case, and your nursing practice more generally.

The panel had sight of the extensive testimonials you provided. It noted that they came in a number of formats, and from a variety of sources, and were complimentary about your professionalism and nursing practice. It also took into account the testimonials, to which it was referred by Mr Ross during his submissions on your behalf. The panel noted that none of the testimonials included reference to the matters alleged against you by the NMC, although the panel was assured by Mr Ross that those providing testimonials were aware of the current proceedings and the substance of the allegations.

The panel considered you have been working for the last four years unrestricted, and the extent to which that contributes to evidence of strengthened practice. It noted that similar concerns have not been raised during that time. However, the panel had no information before it about your working pattern during the past four years and would have benefited from either appraisal or reference information from your current or most recent employer.

The panel went on to consider whether your misconduct in this case is capable of remediation, whether it has been remediated and the extent of any risk of repetition.

The panel was satisfied that the misconduct in this case is capable of remediation. However, it noted that, in itself, dishonesty is difficult to remediate. It accepted that your dishonesty was a single incident around communication with the NMC, and that you corrected the information that you gave to the NMC five days later. On this basis, the panel concluded that your dishonesty is capable of remediation, albeit with some difficulty. With regard to the facts found prove in relation to Charges 1 and 2, the panel considered that it would be very difficult for you to remediate the concerns raised. These charges involved your misconduct towards a vulnerable, elderly resident and remediation calls for a significant level of insight and strengthened practice, together with cogent evidence as to your recent professional practice.

In considering whether you have remediated the concerns, the panel considered your insight, training courses undertaken, testimonials and working pattern over the past four years. It also considered the relevant NMC guidance. The panel determined that you have not remediated the concerns raised, particularly around your insight. Accordingly, the panel concluded that there remains a risk of repetition.

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

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel determined that a finding of impairment on public interest grounds is required. In addition, the panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds your fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that your fitness to practise is currently impaired.

Sanction

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

In reaching this decision, the panel had regard to all the evidence 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 Kennedy reminded the panel of the main objective of the NMC, namely the safeguarding of members of the public and maintaining a professional standard of conduct. He outlined that this panel, in determining sanction, should consider public protection and public interest concerns, which should be balanced against your interests. He reminded the panel that the imposition of a sanction should not be a form of punishment, albeit it may have that effect.

Mr Kennedy outlined the following mitigating factors which apply in this case:

- You have fully engaged with the Fitness to Practise process; and
- You have not had any previous NMC referrals.

Mr Kennedy also outlined the following aggravating factors which apply in this case:

- This matter involved a breach of trust;
- The case involved the abuse of an elderly, frail resident; and
- The panel has found that you demonstrate a very limited insight into your failings, and there is a lack of evidence of remediation.

Mr Kennedy submitted that the NMC seeks a striking-off order for this case. He submitted that your behaviour underlying the charges is too serious for a panel to either

take no further action or to impose a caution order. He further submitted that, by itself, the clinical issues identified in charges 1 and 2 can be addressed by imposing a conditions of practice order. However, he submitted that, when these concerns are taken together with the dishonesty as outlined in charges 5 and 6 a conditions of practice order would not be the appropriate sanction in this case.

Mr Kennedy further submitted that this matter involved the callous treatment of a vulnerable resident. He submitted that this, combined with elements of dishonesty necessitates that some form of removal from the nursing register whether this is permanent or temporary in nature. The public interest would require that.

Mr Kennedy reminded the panel of the NMC guidance on dishonesty and acknowledged that not all instances of dishonesty are equally serious. However, he submitted that lying to your regulator amounts to serious dishonesty. Mr Kennedy accepted that the dishonesty did not involve direct risk to patients and was short-lived. He submitted that you have demonstrated a lack of insight on both your behaviour towards Resident A and your dishonesty. He further submitted that this, taken together with the absence of an apology and lack of assurance to the panel that this behaviour will not repeat itself, indicates incompatibility with permanently remaining on the register. He invited the panel to impose a striking-off order.

Mr Kennedy submitted that sanction is a decision for the panel, and he invited the panel to consider his submissions when making its decision.

The panel also bore in mind submissions made by Mr Ross on your behalf. He accepted that taking no further action, a caution order and a conditions of practice order are not appropriate in this case in light of the panel's findings of dishonesty, and that the panel faces a choice between the imposition of a suspension or striking-off order.

Mr Ross submitted that the imposition of a suspension order is the most appropriate sanction in this case. He further submitted that a suspension period would allow you the opportunity to develop insight into your failings, reflect upon the panel's determination

and commence substantial remediation on the failings identified. He acknowledged that the period for suspension would be a matter for the panel.

Mr Ross reminded the panel of his previous submissions during the impairment stage, and he asked the panel to bear those submissions in mind when reaching its decision.

Mr Ross submitted that, in relation to the clinical failings involving Resident A, you accept that it was serious, and it probably caused harm to the patient. He further acknowledged that this failing has not, in the panel's finding, been remedied. He submitted that a suspension order would be sufficient to protect the public and mark this conduct as unacceptable whilst giving you the opportunity to develop insight and to remediate into your wrongdoings.

He further submitted that your clinical failing is possible to remediate and that you have shown great industry in trying to remedy your failings, pointing to your CPD, your long career in the healthcare sector and that there had been no issues with your practise before and after 2020.

He further submitted that this may allow you to process the panel's determination, obtain better and more meaningful CPD, to reflect upon that and build this into your clinical practice. Moreover, he stated that this will allow you to obtain better evidence which will be helpful for future panels.

Mr Ross reiterated his submissions that your dishonesty found in charges 5 and 6 rests at the lower end of the NMC's dishonesty 'scale', and that the NMC accepts that not all forms of dishonesty are the same. He submitted that there must be a scope for dishonesty concerns to lead to sanctions other than a striking-off order, as otherwise, the panel's consideration of all other sanctions would be meaningless.

Mr Ross submitted that you are not a bad nurse, and that you may only need to be temporarily removed from the nursing register until you have sufficiently addressed your deficiencies. Mr Ross invited the panel to reflect on whether there is a 'way back' for you, and whether you are capable of developing insight. He submitted that the panel would be unable to determine whether you would develop insight at this stage, but it

should consider whether you have the capacity, resource and ability to develop insight and remedy the deficiencies identified. He submitted that if the panel considered that there is any indication that this is possible, then it should impose a suspension order.

Mr Ross submitted that the panel has not found any attitudinal concerns or character deficiencies, and it has acknowledged that the charges are remediable, albeit difficult. He reminded the panel that being difficult to remediate is not the same as impossible to remediate, and the panel should bear that in mind on whether a striking-off order would be proportionate at this point.

Mr Ross submitted that any suspension order will be reviewed at the end of the period. He submitted that, at that stage, if any future panel is not satisfied by the progress you have made with your remediation and strengthening of your practice, the suspension order can be extended or another order can be imposed. He invited the panel to consider this an appropriate safeguard in the context of this case. He reiterated that the burden will be on you in any future substantive order review hearings to demonstrate that you have answered the issues put to you, namely that you are remorseful, you have trained in the areas you need to with sufficient depth, that you have developed sufficient insight and that you can provide cogent evidence of recent professional practice and employment history.

Mr Ross submitted that the misconduct took place four years ago, and you have a clean disciplinary record both before and after the incident. He invited the panel to consider proportionality, and whether it would be proportionate to deprive the public of a good nurse with a long, unblemished career with no disciplinary issues before or after summer 2020.

Accordingly, Mr Ross invited the panel to impose a suspension order.

Decision and reasons on sanction

Having found your fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel bore 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 regard to the SG. The decision on sanction is a matter for the panel by independently exercising its own judgement.

The panel took into account the following aggravating features:

- Your lack of remorse, apology and inadequate remediation of your failings;
- You abused your position of trust by your behaviour towards an elderly vulnerable resident in circumstances in which you thought you were not being observed;
- You lack insight into your failings; and
- Your conduct in using force put a resident at risk of suffering harm.

The panel also took into account the following mitigating features:

- Four years have elapsed since the events, you have apparently followed good practice in that you have not come to the attention of the NMC, albeit the panel has not seen cogent evidence of your performance during that period;
- In relation to your dishonesty, it appears to be a one-off incident which you corrected five days later by communicating with the NMC.

The panel noted Mr Ross submissions on mitigation, but it concluded that they simply reflect the sort of reasonable conduct expected of a registered nurse, and do not amount to mitigation.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict your 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 your 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 your 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 your use of force against Resident A and the elements of dishonesty within the charges in this case. Furthermore, the panel concluded that the placing of conditions on your registration would not adequately reflect the seriousness of this case nor meet the public interest.

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

- *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; and*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour.*

With regard to the first bullet point, the panel found that this is not engaged in this case. Although lesser sanctions would not be appropriate, the panel noted that this case does not involve a single incident of misconduct.

The panel noted that your behaviour towards Resident A occurred against a backdrop that you describe as a stressful working shift. Whilst this context may mitigate some other types of failure, your actions in using force on a vulnerable elderly resident

suffering from dementia and approaching end of life appear borne out of frustration on your part and indicate a poor attitudinal approach.

The panel has no evidence before it of any repeated behaviour of this nature since the incidents. However, it also has insufficient information to gain a more detailed understanding of your nursing practice in the intervening period.

With regard to insight, the panel considered its earlier determination that your current fitness to practise is impaired and the reasons for it. The panel determined that you have very limited insight into your misconduct and its impact on Resident A, their family and the wider nursing profession. Your evidence and reflections made no reference to how you came to act in the way you did nor what steps you have in place to ensure that you do not act in a similar way in the future. As a consequence of your poor insight and lack of meaningful remediation the panel has concluded that there remains a risk of your conduct being repeated. Therefore, the panel concluded that the fourth bullet point is not engaged in this case.

In considering the appropriateness of a suspension order in this case, the panel balanced your progress in developing insight and remediating over the past four years with the seriousness of the matters raised particularly in charges 1 and 2 and the likelihood of you developing insight going forward. Whilst the panel considered the extent to which a suspension order may provide another opportunity for you to develop insight and remediate, having regard to your progress to date, it concluded that it is unlikely that you will do so. The panel concluded that you have had sufficient time to develop your insight, and it remains very limited.

In addition, the panel considered that given the gravity of the matters raised in relation to your behaviour towards Resident A, a suspension order will not be sufficient to protect patients, public confidence in nurses or professional standards. Therefore, the panel determined that in all the circumstances and having regard to the overarching objectives of the NMC a suspension order is not a suitable sanction to address your misconduct.

Finally, in considering a striking-off order, the panel 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?*

With regard to the first consideration, the panel determined that your actions, particularly in charges 1 and 2, were fundamentally at odds with what a member of the public and your colleagues would expect from a registered nurse. The panel also concluded that your failure to properly reflect and develop insight into your actions goes to a lack of professionalism on your part. Whilst the panel accepts the position that you adopted throughout the hearing, you could have demonstrated a significant level of insight from that position but failed to do so.

Turning to whether public confidence in nurses can be maintained if you are not removed from the register, the panel has determined that your actions in relation to Resident A were serious and that your dishonesty had the potential to undermine the NMC in the discharge of its function. The panel determined that to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

Your conduct was a significant departure from the standards expected of a registered nurse including numerous breaches of the Code, particularly with regard to your behaviour towards Resident A, who was vulnerable, suffering from dementia and approaching end of life. The panel considered that your serious breach of fundamental tenets of the profession is wholly incompatible with you remaining on the register.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Nothing short of this would be sufficient in this case.

This will be confirmed to you in writing.

Interim 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 interests 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 Kennedy. He submitted that the substantive order would not come into effect for 28 days and an interim suspension order is appropriate to cover the appeal period, on the grounds of public protection and public interest. He asked for an 18-month order.

Mr Ross made no submissions.

The panel heard the advice of the legal assessor.

Decision and reasons on interim order

The panel was satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order, in reaching its decision to impose the 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. The panel therefore imposed an interim suspension order for a period of 18 months.

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

That concludes this determination.