Nursing and Midwifery Council
Fitness to Practise Committee
Substantive Hearing

Monday, 26 July 2021 – Friday, 6 August 2021
Monday, 6 December 2021 – Friday, 17 December 2021
Wednesday, 2 March 2022 – Friday, 4 March 2022,
Monday, 14 March 2024 and Friday, 18 March 2022
Monday, 27 June 2024 – Tuesday, 28 June 2022
Thursday, 30 June 2022
Tuesday, 8 November 2022 – Friday, 11 November 2022
Tuesday, 15 November 2022 – Friday, 18 November 2022

Nursing and Midwifery Council, Regus, Forsyth House, Cromac Street, Belfast, BT2 8LA

Monday, 5 June 2023, Thursday, 8 June 2023, Wednesday, 14 June 2023 – Friday 16 June 2023, Monday, 3 July 2023 – Friday, 7 July 2023

The Pharmaceutical Society of NI,

73, University Street, Belfast, BT7 1HL

Monday, 11 December 2023 – Thursday, 14 December 2023
Monday, 26 February 2024 – Friday, 1 March 2024

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

Wednesday, 10 April 2024 – Thursday, 11 April 2024 and 10 May 2024

Virtual Hearing

Monday, 19 August 2024 – Thursday, 22 August 2024

Armagh City Hotel, 2 Friary Rd, Armagh BT60 4FR

Monday, 18 November 2024 – Tuesday, 19 November 2024

Virtual Hearing

Name of registrant:	Mildred Jean Wylie
NMC PIN:	71L0044N
Part(s) of the register:	Registered Nurse – Sub part 1 Adult – 21 February 1975
Relevant Location:	County Armagh

Type of Case:	Misconduct
Panel members:	John Vellacott (Chair, Lay member) Seamus Magee (Lay member) Florence Mitchell (Registrant member)
Legal Assessor:	Gerard Coll
Hearings Coordinator:	Max Buadi (26 July 2021 – 6 August 2021, 6-17 December 2021, 2-4 March 2022 14, 18 March 2022, 8-11 November 2022 and 15-18 November 2022, 5,8 June 2023, 14-16 June 2023, 3-7 July 2023, 11 – 14 December 2023, 26 February 2024 – 1 March 2024, 10-11 April 2024, 19-22 August 2024) Sherica Dosunmu (10 May 2024)
Nursing and Midwifery Council:	Represented by Mark Hayward, Case Presenter (26 July 2021 – 6 August 2021, 6 – 17 December 2021, 2 - 4 March 2022 14 and 18 March 2022, 27-28 June 2022, 30 June 2022, 15-18 November 2022, 3-7 July 2023, 11-14 December 2023, 26 February 2024 – 1 March 2024 and 10 May 2024, 18-19 November 2024) Represented by Aoife Kennedy, Case Presenter (8-11 November 2022 and 5,8 June 2023 and 14-16 June 2023) Alex Radley (19-22 August 2024)
Mrs Wylie:	Present and represented by Norman Wylie (26 – 30 July 2021) Not Present and not represented (2-6 August 2021) Present and represented by Norman Wylie (6 - 8 December 2021, 2 - 4 March 2022, 14 and 18 March 2022, 27-28 June 2022, 30 June 2022, 8-11 November 2022, 15-18 November 2022, 5 June 2023 and 8 June 2023) Not present but represented by Norman Wylie (14 - 16 June 2023 and 3-4 July 2023)

	Not Present and not represented (5-7 July 2023) Not Present and not represented (11-14 December 2023) Not present but represented by Simon Holborn (NMCWatch) (10-11 April 2024) Not Present and not represented (26 February 2024 – 1 March 2024) Present and represented by Simon Holborn (NMCWatch) (10 May 2024, 19-20 August 2024) Not present but represented by Simon Holborn (NMCWatch) (10 May 2024, 21-22 August 2024) Present and represented by Simon Holborn (NMCWatch) (18-19 November 2024)
Facts proved:	Charges 1, 2, 3, 4, 5, 6a, 6b, 7, 8, 9, 11, 12, 13, 14, 15a, 15b, 15c, 15d, 15e and 15f
Facts not proved:	Charge 10
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Decision and reasons on Mr Wylie representing you according to Rule 20 (4)

At the outset of the hearing, Mr Hayward reminded the panel of Rule 20 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004 (the Rules) which state:

> **20.** - (1) The presenter and the registrant shall be entitled to be heard by the Committee.
>
> (4) A person who represents or accompanies the registrant shall not be called as a witness at the hearing.

Mr Hayward submitted that while you have the right to be represented by anyone, if your husband, Mr Wylie, was to represent you during these proceedings, then you cannot call him as a witness.

Mr Wylie confirmed to the panel that he would not be called as a witness on your behalf.

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

The panel considered that Mr Wylie would not be called as a witness on your behalf. In light of this, it was content for Mr Wylie to continue as your representative.

Lay Panel Member Declaration

Having read the charges the evening before the hearing commenced Mr Magee saw reference to the Regulation and Quality Improvement Authority (RQIA) in some of the charges. He disclosed that he had been a non-executive member of the board of the RQIA from April 2014 until June 2020. As a non-executive board member he was not involved in operational matters and his role was primarily a governance one. He said he was not familiar with any aspect of this case.

Mr Wylie had no objection to Mr Magee sitting on this panel.

Mr Hayward submitted that this case has a very complex investigative background that involved the RQIA, the Southern Health and Social Care Trust (the Trust) and the Police Service of Northern Ireland (PSNI). He further submitted that this case has a complex procedural history.

Mr Hayward informed the panel that this case first opened in January 2018 and there were two applications made for the previous panel to recuse themselves based on apparent bias. He submitted that this panel needed to be aware of actual bias and apparent bias.

Mr Magee had asked for sight of the witnesses in advance and informed the NMC that he did not know the registrant or any of the witnesses being called by the NMC.

Mr Magee said that if something does arise in this case that he had prior knowledge of, then he would declare it. However, he confirmed that he had no knowledge of the circumstances surrounding this case and that the issues giving rise to the charges had occurred a number of years before his appointment to the RQIA.

The panel was content that there was no actual or apparent bias in regard to Mr Magee's continued participation as member of the panel. Mr Magee became a member of the board of RQIA a number of years after the allegations were said to have occurred. Additionally, the panel was satisfied that he had no prior knowledge of the case and did not know any of the witnesses.

The panel therefore concluded that the reasonably informed observer would not perceive actual or apparent bias and in these circumstances there was no reason for Mr Magee to recuse himself.

Decision and reasons on application for hearing to be held in private

During Mr Hayward's application for the constitution of the panel, he made a request that this part of the hearing be held in private on the basis that proper exploration of the

circumstances surrounding the application involves [PRIVATE]. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Wylie indicated that he had no objection to the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it was satisfied that this was justified by the interests of any party or by the public interest.

Having heard that there would be reference [PRIVATE], the panel determined to hold part of the hearing in private as and when such issues are raised.

Application for the panel to consider its own constitution

Mr Hayward informed the panel that the previous panel had been discharged by the assistant registrar and the present panel had been substituted in its place. He referred the panel to the case of *R (on the Application of Michalak) v General Medical Council [2011] EWHC 2307 (Admin), 2011 WL 2748521* which sets out the procedure to be followed in this matter.

Mr Hayward suggested that today's panel consider whether the substitution was:

- In the interest of justice for the proper purpose and;
- Whether the correct procedure was followed.

Mr Hayward informed the panel that this hearing formally began in January 2018. Your representative at the time indicated that he intended to make an application for a stay of proceedings on the basis of an abuse of process. Mr Hayward said that this application and a number of other applications took the remainder of 2018 to resolve.

Mr Hayward informed the panel that he was instructed in January 2019. The stay of proceedings application resumed but another application, a second recusal application within the context of the stay of proceedings application, took most of 2019 to be considered. The recusal application was refused on 19 September 2019 and there was no appeal made.

Mr Hayward informed the panel that four weeks in February 2020 were listed to hear the stay of proceeding application. However, another issue arose.

My Hayward said that prior to the hearing resuming in February 2020, concerns about the health condition of the registrant panel member was in question. The NMC considered whether or not she could resume and how the hearing should proceed. During this period, the chair's second tenure at the NMC was due to expire on 23 March 2020. Under constitution rules, there can only be a maximum of two terms. Additionally, the registrant panel member's registration with the NMC was due to expire in the latter half of 2020.

Mr Hayward said that a letter was sent to you outlining the assistant registrar provisional view that the panel should be discharged and a new panel put in its place. Objections were made by your representatives towards this position and the way in which that view had been reached.

Mr Hayward said that by the time the hearing was due to resume in February 2020, the health of the registrant member had improved and she was now able to attend. Before this, the assistant registrar wrote to you outlining a proposed decision to substitute the chair only. This would be after the application for a stay of proceedings had been resolved in the resumed hearing in February 2020.

Mr Hayward told the panel that when the hearing resumed in February 2020, your representative applied for the matter of the panel's constitution to be dealt with before the stay of proceedings application. There were concerns about how the decision had been made. Your representative wanted the panel to adjudicate on its own constitution.

Mr Hayward informed the panel that the NMC's position was that the stay of proceeding application should be dealt with first. The NMC considered that the matter of the panel's own constitution and the stay of proceeding application could not be considered in the time allotted. The previous panel invited submissions in relation to its constitution at the opening of the hearing in February 2020. Mr Hayward said that the previous panel was concerned with the power of the assistant registrar to substitute panel members.

Mr Hayward submitted that the question of whether the assistant registrar had the power to substitute panel members was a matter for another tribunal and the High Court upon review. In reference to the case of *Michalak*, Mr Hayward submitted that the questions, for the panel were to consider is:

1. Whether the substitution was in the interest of justice.
2. Whether the substitution was for a proper purpose.
3. Whether proper procedures were followed.

Mr Hayward referred the panel to specific paragraphs within the *Michalak* decision. He told the panel that on 19 February 2020, the previous panel made a decision but did not directly answer the "*Michalak* questions". He invited the panel to do so today.

Mr Hayward told the panel that the stay of proceedings application was concluded in 2020 and the decision had not been appealed.

Mr Wylie submitted that he was concerned at the length of the time the NMC had taken regarding the substitution of the panel member and that you were paying for this. He submitted that you do not have a legal team as a result of having used up all your funds on earlier proceedings and procedures. He further submitted that whether or not a panel member could sit had nothing to do with them. He submitted that you should not have had to pay for representation during this period.

Mr Wylie highlighted the fact that the previous registrant panel member's registration expired and could no longer be a member of the panel. However, your registration expired in June 2021 but was extended by the NMC due to these proceedings.

Mr Wylie submitted that he had no objection to the application.

The panel heard and accepted the advice of the legal assessor. He reminded the panel of Article 26D of the Nursing and Midwifery Order 2001 which stated:

> The Fitness to Practise Committee must consider—
>
> (a) an allegation referred to it by the Council, Screeners or the Investigating Committee;…

In reaching its decision the panel took into account the submissions of both Mr Hayward and Mr Wylie. It considered each question carefully.

1. Whether the substitution was in the interest of justice.
2. Whether the substitution was for a proper purpose.
3. Whether proper procedures were followed.

The panel bore in mind that this hearing formally opened in January 2018. While the case was opened, the charges had not been read. Therefore, the previous panel had not been seized of the case.

The panel also bore in mind the length of time the applications took to complete. As a result the case had not progressed past the preliminary issues raised. The panel dealt with the fact that neither the chair nor the registrant were eligible to sit as panel members as their terms of office were due to expire.

The panel took account of the fact that a panellist can only sit for two terms which is eight years. It was of the view that there was no compelling reason that the previous chair needed to continue past his period of tenure. The panel had not been seized of the case, neither party had been given the opportunity to present their respective cases and no witnesses had been called.

In light of this, and the time that had passed since the hearing formally opened, the panel was satisfied the substitution was proper and in the interest of justice. It also bore in mind that you do not oppose the application.

The panel concluded that the proper procedure had been followed.

Decision and reasons on application for hearing to be held in private

After Mr Wylie's submissions for the application for disclosure, Mr Hayward made a request that part of this case be held in private. He submitted that Mr Wylie made an allegation of dishonesty against someone that was not present at the hearing. Mr Hayward submitted that the name of that individual should be anonymised. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Wylie indicated that he had no objection to the application.

The legal assessor reminded the panel that while Rule 19(1) provides, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it is satisfied that this is justified by the interests of any party or by the public interest.

Having heard the submissions of Mr Hayward, the panel determined that it would be appropriate to anonymise the named individual.

Application for disclosure

Mr Wylie made this application for disclosure relying on Rule 22(5) for disclosure of document which he said was essential to allow you a fair hearing. Mr Wylie produced a list of documents during the course of his submissions (produced below):

1. *As the NMC case relies on Trust claim that [Resident U] had no behavioural needs, I require a statement from [Dr 1], who had to stop her care while driving along Markethill main street because [Resident U] was lying down wishing to be run over.*
2. *I require PSNI witness statement from Markethill minister as [Resident U] disrupted church service during 2 minute silence on remembrance Sunday, saying he would get the IRA to blow the F… PLACE up.*
3. *I require PSNI witness statement from Government Lead, [Mr 6] ref: (Statement of Purpose his role and responsibilities) regarding Resident U challenging behaviour both inside and outside the Residential Home.*
4. *I require PSNI witness from [Resident U] foster sister regarding challenging behaviour as to why they were unable to look after [Resident U] as [Resident U] continually lay down outside their home.*
5. *I require PSNI Witness statement from Hutton Travel Managing director who witnessed [Resident U]'s behaviour while on escorted holiday.*
6. *I require PSNI witness statement from [Mr 1] who was the former Head of Finance in RQIA, and very involved in the case.*
7. *I require PSNI witness statement from [Ms 4] Social worker who was involved with [Resident U] discharge from St Lukes hospital to Residential Home.*
8. *I require Consultant Psychiatrist case notes for [Resident U] from admission. Mrs Wylie accompanied [Resident U] to all appointments over the years and is fully aware of the all consultants that took place concerned [Resident U] behaviour.*
9. *I require Transport Policies from other Learning Disability Homes within the SHSCT. These were shown to me in St Luke's Hospital but I was not allowed to photocopy them. All of them were similar to our own Mobility monies that were pooled. (See documents from [Mr 5] 2009)*
10. *Our legal team requested Transport Policies from other Learning disability Homes from the Trust, PSNI and NMC but all have refused.*
11. *I require disclosure [Mr 1] SHSCT, relied on when he made the referral in 2013 to the NMC stating that I had taken a seven figure sum.*
12. *I require full disclosure of how the Trust arrived at this figure as it is a very damaging statement for a former CEO of the Trust to make, and I'm sure if it was made against any of you here present you would also wish it to be evidenced.*

13. *I require the response from the RQIA to Trust in regards to 2nd safe guarding report and what action RQIA took. Was it the same as the 1st safe guarding report? This report is reoffered to by NMC witnesses so I am unable to prepare my defence if I cannot get the RQIA panel verdict.*
14. *We need disclosure of these complaints to [Mr 1] and [Mr 2] from the Trust. Why did RQIA not take enforcement action against Mr Wylie on the 2nd safe guarding report? This must be disclosed.*
15. *Disclosure is required as this information a seven figure sum was released by SHSCT to the press. Another false statement from SHSCT to discredit our family business.*

    15A. *Full disclosure is required on [Mr 3] actions. [Mr 3] in his witness statement claims he contacted manager in Hotel in BAY VIEW HOTEL as to where my husband slept when residents were on holiday. This again is out of [Mr 3] role and I believe breached Mr Wylie's Human Rights and a spurious attempt to discredit my husband's integrity and destroying my excellent reputation concerning the Residential Homes. I need to know on what authority he had the Power to take this action.*
16. *I require all disclosure around their decision making and why NMC refused to accept their advice (see exhibit 8b)*
17. *I require disclosure of the fees charged by other Homes with similar registration, as after we left PVA 3 Strategy Meeting on 8th October 2008 and attended by RQIA, SHSCT care managers, SHSCT internal audit Mr and Mrs Wylie, discussing placements, transport and meals chaired by [Mr 7] SHSCT.*
18. *I require full disclosure of all PVA 1-9 to ensure proper procedures were carried out from a safeguarding investigation. Reference: Safeguarding Vulnerable adults. (Regional Adult Protection Policy & Procedural Guidance Sept 2006) joint protocol PVA 1 must be completed within 24-48 hours of concern of any abuse and followed through to 9. PVA see PVA 1-9. The information is required to enable you to respond to the concerns raised and is applicable to each charge.*

This application did not progress as Mr Hayward conceded that he may have inadvertently misled the panel in relation to the efforts made by Mr Wylie to obtain disclosure.

Mr Hayward had attempted to assist the panel and Mr Wylie by suggesting that his opposition would refer to a similar list of documents and that both lists could be combined for ease of reference. However, this did not work in practice and both Mr Wylie and Mr Hayward presented their own set of documents.

In order to be fair to you, the panel invited Mr Wylie to start his application afresh. He presented the panel with a new list of documents for disclosure. These are listed below:

1. *As the NMC case relies on Trust claim that [Resident U] had no behavioural needs, I require a statement from [Dr 1], who had to stop her car while driving along Markethill main street because [Resident U] was lying down wishing to be run over.*
2. *I require PSNI witness statement from Markethill minister as [Resident U] disrupted church service during 2 minute silence on remembrance Sunday, saying he would get the IRA to blow the F… PLACE up.*
3. *I require PSNI witness statement from Government Lead, Mr 6 ref: (Statement of Purpose his role and responsibilities) regarding Resident U challenging behaviour both inside and outside the Residential Home.*
4. *I require PSNI witness from [Resident U] foster sister regarding challenging behaviour as to why they were unable to look after [Resident U] as [Resident U] continually lay down outside their home.*
5. *I require Witness statement from Hutton Travel Managing director who witnessed [Resident U]'s behaviour while on escorted holiday.*
6. *I require witness statement from [Mr 1] who was the former Head of Finance in RQIA, and very involved in the case.*
7. *I require Consultant Psychiatrist case notes for [Resident U] from admission. Mrs Wylie accompanied [Resident U] to all appointments over the years and is fully aware of the all consultant visits that took place concerned [Resident U] behaviour.*
8. *I require Transport Policies from other Learning Disability Homes within the SHSCT. These were shown to me in St Luke's Hospital but I was not allowed to*

photocopy them. All of them were similar to our own Mobility monies that were pooled. (See documents from Mr 5 2009)

9. *Our legal team requested Transport Policies from other Learning disability Homes from the Trust, PSNI and NMC but all have refused.*
10. *I require disclosure [Mr 1] SHSCT, relied on when he made the referral in 2013 to the NMC stating that I had taken a seven figure sum.*
11. *I require full disclosure of how the Trust arrived at this figure as it is a very damaging statement for a former CEO of the Trust to make, and I'm sure if it was made against any of you here present you would also wish it to be evidenced.*
12. *I require the response from the RQIA to Trust in regards to 2nd safe guarding report and what action RQIA took. Was it the same as the 1st safe guarding report? This report is reoffered to by NMC witnesses so I am unable to prepare my defence if I cannot get the RQIA panel verdict.*
13. *We need disclosure of these complaints to [Mr 1] and [Mr 2] from the Trust. Why did RQIA not take enforcement action against Mr Wylie on the 2nd safe guarding report? This must be disclosed.*
14. *Disclosure is required as this information a seven figure sum was released by SHSCT to the press. Another false statement from SHSCT to discredit our family business.*
15. *Full disclosure is required on [Mr 3] actions. [Mr 3] in his witness statement claims he contacted manager in Hotel in BAY VIEW HOTEL as to where my husband slept when residents were on holiday. This again is out of [Mr 3] role and I believe breached Mr Wylie's Human Rights and a spurious attempt to discredit my husband's integrity and destroying my excellent reputation concerning the Residential Homes. I need to know on what authority he had the Power to take this action.*

    15 - I require all disclosure around their decision making and why NMC refused to accept their advice (see exhibit 8b)
16. *I require disclosure of the fees charged by other Homes with similar registration, as after we left PVA 3 Strategy Meeting on 8th October 2008 and attended by RQIA, SHSCT care managers, SHSCT internal audit Mr and Mrs Wylie, discussing placements, transport and meals chaired by [Mr 7] SHSCT.*

Mr Wylie submitted that his application for disclosure was based on a breach of your rights to a fair hearing. The documents were required by Mr Wylie before the hearing began so that he can understand the contents and assess their value in your defence. In Mr Wylie's submission the failure by the NMC and the other bodies to supply him with the documents made it impossible for you to have a fair hearing because the preparation of your defence was being frustrated. Without the documents, which you had been unable to obtain through the efforts made by your solicitors, you were unable to present evidence to the panel which would establish that the allegations were without foundation.

Efforts had been made by them to obtain the documents thorough the NMC and directly from the Trusts in Northern Ireland, the PSNI and the RQIA.

Mr Wylie submitted that the transport polices for residents in Northern Ireland had been unclear to you and to others in the same position as you. In consequence you and others operated a scheme of transport which was fair to residents financially. It was important, in Mr Wylie's submission, that the panel understood that there was no dishonesty on your part in applying this scheme, which you thought reflected the resident's best interests and the spirit of the policy. It was essential that the panel could read a range of transport policies from similar providers to support your defence.

Mr Wylie submitted that in a similar way, your defence would be supported by the panel being able to see polices for additional payments levied on residents. Further, there were PSNI statements available, in his understanding, relating to certain residents which would explain to the panel the challenging behaviour exhibited by those residents. That information would support your defence that certain charges were fairly and appropriately levied.

Mr Wylie submitted that a real inequality of arms was created by you being denied access to the listed documents before the hearing began.

Mr Wylie explained in the course of his submission that each document in turn was required by him now and that the only option to obtain the documents was the panel

agreeing to require the NMC to obtain the documents for him. Mr Wylie submitted that the rules empowered the panel to do this.

Mr Hayward's response

Mr Hayward opposed your application. His response was that:

1. None of the documents sought were relevant, and
2. The documents not being produced by the NMC did not trigger your article 6 fair hearing rights.

Mr Hayward referred to the case of *R (Johnson and Maggs) v Professional Conduct Committee of the Nursing and Midwifery Council [2008] EWHC 885 (Admin)* as authority for the proposition that two conditions required to be satisfied before your article 6 rights were triggered. Firstly, you had to show that there was a real inequality of arms such that you would truly be denied a defence by the documents not being produced. Secondly you had to demonstrate that the documents were relevant to your defence. Mr Hayward submitted that none of these conditions had been satisfied by you.

The first condition was not satisfied because you had other means available to you to support your defence. You could obtain other relevant evidence that served the same purposes by calling witnesses such as the care home and medical staff referred to the PSNI statements and affected by the policies as appropriate. You could call other witnesses such as former employees who were likely to be favourable to you. You could interview the persons directly and supply your own statements. The policies and other documents were likely to be available publicly, but even if not, the relevant witnesses available to you could be supplied to the panel directly. In addition, you could invite other care home providers in your area to explain how policies, in respect of charging, were implemented at that time.

The second condition was not satisfied because you had failed to demonstrate the relevance of the documents to your defence.

Mr Hayward Response

Regarding disclosure item 1, Mr Hayward submitted that Mr Wylie's submissions that the NMC relies on the Trusts claim that Resident U had no behavioural needs was misleading. He submitted that the panel will hear the NMC's case in due course and will note that the NMC and the Trust accepted there were difficulties regarding Resident U's behaviour but did not meet the definition of challenging behaviour.

Regarding disclosure items 1 to 5 and 7, Mr Hayward submitted that these were all police statements that related to Resident U's behaviour. He submitted that it was not entirely true that you made no effort to obtain these documents yourself. However, these efforts were insufficient according to the correspondence from your previous legal team as they did not contain the police responses back to you.

Item 8, which was not a police statement, related to the difficulty of Resident U's behaviour. He submitted that this was not relevant to the matters charged.

Mr Hayward submitted that the NMC's case was that the additional payments levied in relation to Resident U were illegitimate and improper. Whether Resident U exhibited challenging behaviour would not determine whether charges were proved.

Regarding disclosure item 6, Mr Hayward submitted that this was another police statement. He submitted that it was not clear how this would assist you. He also submitted that you could call Mr 5 as a witness since you retained him as a consultant. He also referred the panel to a character reference he had provided to you.

Regarding disclosure item 9 and 10, Mr Hayward submitted that it was not clear who these policies should be obtained from by the NMC. He accepted that he was wrong to submit that you made no effort to obtain these. He submitted that your previous legal team stated that these were relevant to the charge of dishonesty and whether the transport policies were improper and did not operate as the NMC said it did. He

reminded the panel that you submitted that these were the policies that operated at the time in Northern Ireland.

Mr Hayward submitted that the use of the policies in relation to the dishonesty allegations was a misunderstanding of the law. The application to obtain the policies by your solicitors was based on the now obsolete Ghosh test for dishonesty which was replaced by the Supreme Court in 2017 with the objective test of dishonesty in the Ivey case. He submitted that these polices were not relevant at the facts stage. The assertion that others were doing the same thing as you was not a good defence. In any event, you could obtain evidence of a commonly accepted practice by calling other care home managers as witnesses.

Regarding disclosure item 13, Mr Hayward submitted that the first Trust report had been disclosed to you for the better part of a decade. He submitted that his understanding was that no such proposals were made to cancel the Home's registration in the second report.

Regarding disclosure item 11 to 15, Mr Hayward submitted that these all related to the decision making process by third parties. He submitted that the disclosure requests related to decisions by third parties and were not relevant in this hearing. Further, the seven figure sum was not relied upon by the NMC and therefore was irrelevant.

Mr Hayward submitted that if the panel heard the NMC evidence and were of the view that the evidence was not sufficient, then it could find the relevant charges not proved. He also submitted that if you were concerned about how third parties come to their respective decisions, then that was a matter for another body and was not relevant to these proceedings.

Regarding disclosure item 15A, Mr Hayward submitted that it is not clear what was being asked to disclose or who this was being sought from. He submitted that Mr 3 is an NMC witness that you could cross examine.

Regarding disclosure item 16, Mr Hayward submitted that this was a cross examination point and not a disclosure point. Further, the NMC case examiners made a decision of a case to answer and the Fitness to Practice Committee was bound to convene a disciplinary hearing.

Regarding disclosure item 17, Mr Hayward submitted that this would enable you to establish a wide pattern of practice regarding top up fees. Mr Hayward submitted that it was not clear who the NMC were supposed to obtain this information from. He submitted that there were some efforts to obtain this according to the correspondence from your legal team. However, he submitted that these efforts were insufficient.

As with disclosure item 9, Mr Hayward submitted that your previous legal team stated that item 17 was relevant in relation to dishonesty. Mr Hayward submitted that this was a misunderstanding of the law and not relevant at the facts stage.

Regarding disclosure item 18, Mr Hayward submitted that the NMC's case does not rely on PVA forms. He further submitted that this was not an item that the NMC had and had not disclosed. Mr Hayward submitted that it was not clear how these forms assist in your case in relation to the charges you face.

Mr Hayward submitted that if it was your case that the Trust's investigation was fundamentally flawed, then you would able to explore this in cross examination. You have the facilities available to you to do this without the NMC being required to obtain documents.

Mr Hayward submitted that none of these disclosure items were relevant or necessary to cure a purported "inequality of arms".

Mr Hayward then took the panel through the correspondence you provided from your former legal team. He submitted that there was insufficient evidence of properly directed effort to obtain some of these items to justify the panel requiring the NMC to produce them.

Mr Hayward drew the panel's attention to a letter from your legal team dated 31 August 2017. He submitted that some of the disclosure requests made here have not been renewed by Mr Wylie and was therefore irrelevant.

Mr Hayward also drew the panel's attention to a letter of response sent by the NMC to your legal team dated 8 September 2017. The case of *R (Johnson and Maggs)* was referenced here. Mr Hayward submitted that the NMC's position on disclosure has been clear to you since 8 September 2017 and what was required of you in order to establish a right to disclose had been clear since that day. It was further stated that the NMC has no obligation to source what was requested.

Panel decision on disclosure

The panel heard and accepted the advice of the legal assessor. He referred the panel to Rule 22 (5) of the rules which stated:

> ***22.***—*(1) Witnesses shall be required to take an oath, or to affirm, before giving evidence at any hearing.*
>
> > *(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents.*

The overarching objective and the objectives were found in Art 3(4) and Art 3(4A) of the Nursing and Midwifery Council 2001.

In reaching its decision, the panel carefully considered the submissions of Mr Wylie and Mr Hayward and all the relevant documentation. It also took account of the advice from the legal assessor who advised the panel that it must ask itself three questions:

1. Are the documents requested in disclosure relevant?
2. Does the document exist now?

3. Is there a reasonable prospect that the required target material can be obtained in a reasonable time so that the protection of the public and the objectives are maintained?

The legal assessor reminded the panel that it has no power to compel compliance with a requirement to produce documents. The panel must be satisfied that the documents sought were relevant to the defence, and that they could not be obtained in any other way by you.

1. *As the NMC case relies on Trust claim that [Resident U] had no behavioural needs, I require a statement from [Dr 1], who had to stop her care while driving along Markethill main street because [Resident U] was lying down wishing to be run over.*

The panel noted that the NMC is not disputing that Resident U had behavioural issues but rather that he did not meet the definition of "challenging behaviour". The panel also noted you have not demonstrated a link between the statement of Dr 1 and the charges you are facing. As a result, the panel was satisfied that the request for Dr 1's statement was not relevant.

2. *I require PSNI witness statement from Markethill minister as [Resident U] disrupted church service during 2 minute silence on remembrance Sunday, saying he would get the IRA to blow the F… PLACE up.*

The panel noted that you had not established how this PSNI statement would assist you in relation to the charges you faced. As a result, the panel was satisfied that the request for the Markethill minister of religion's statement was not relevant.

3. *I require PSNI witness statement from Governance Lead, [Mr 6] ref: (Statement of Purpose his role and responsibilities) regarding [Resident U] challenging behaviour both inside and outside the Residential Home.*

The panel noted that you have not established how this PSNI statement would assist you in relation to the charges you face. It also bore in mind that this individual was your employee and was of the view that you could call him as a witness to establish what was said within his PSNI statement.

4. *I require PSNI witness from [Resident U] foster sister regarding challenging behaviour as to why they were unable to look after [Resident U] as [Resident U] continually lay down outside their home.*
5. *I require PSNI Witness statement from Hutton Travel Managing director who witnessed [Resident U]'s behaviour while on escorted holiday.*
6. *I require PSNI witness statement from [Mr 1] who was the former Head of Finance in RQIA, and very involved in the case.*
7. *I require PSNI witness statement from [Ms 4] Social worker who was involved with [Resident U] discharge from St Lukes hospital to Residential Home.*

The panel noted that you have not established a relevant connection to any of these PSNI statements to assist you in relation to the charges you face.

As with all the aforementioned PSNI statements you have requested, the panel noted that it had correspondence from your former legal team which demonstrated that you had applied for these PSNI statements. However, the panel considered that there was no response from the police as to why your request was refused. Further, it has no evidence before it of how you responded.

The panel was not satisfied that the request for these PSNI statements were relevant.

8. *I require Consultant Psychiatrist case notes for [Resident U] from admission. Mrs Wylie accompanied [Resident U] to all appointments over the years and is fully aware of the all consultants that took place concerned [Resident U] behaviour.*

The panel noted that you have not established how these case notes would assist you in relation to the charges you face. The panel bore in mind that the NMC's case is not

disputing that Resident U had behavioural issues. Further, you presented no evidence to demonstrate that you had tried to obtain this.

The panel was not satisfied that the request for these case notes was relevant.

9. *I require Transport Policies from other Learning Disability Homes within the SHSCT. These were shown to me in St Luke's Hospital but I was not allowed to photocopy them. All of them were similar to our own Mobility monies that were pooled. (See documents from [Mr 5] 2009)*
10. *Our legal team requested Transport Policies from other Learning disability Homes from the Trust, PSNI and NMC but all have refused.*

The panel noted that you have not established how the acquisition of Transport Policies from other providers would assist you in the panel's consideration of the charges. The panel also took account of the correspondence between your former legal team and the NMC. The letter from the Western Health and Social Care Trust, dated 18 October 2017, stated that the Trust did not believe there would be a consistent source of information for this.

The panel was not satisfied by your submission that the request for the transport policies from other homes was relevant to your defence.

11. *I require disclosure [Mr 1] SHSCT, relied on when he made the referral in 2013 to the NMC stating that I had taken a seven figure sum.*
12. *I require full disclosure of how the Trust arrived at this figure as it is a very damaging statement for a former CEO of the Trust to make, and I'm sure if it was made against any of you here present you would also wish it to be evidenced.*

The panel noted that the NMC was not relying on the seven figure sum as part of its case and the panel was not satisfied that it was relevant and would assist your defence.

13. *I require the response from the RQIA to Trust in regards to 2nd safe guarding report and what action RQIA took. Was it the same as the 1st safe guarding*

report? This report is referreds to by NMC witnesses so I am unable to prepare my defence if I cannot get the RQIA panel verdict.

14. *We need disclosure of these complaints to [Mr 1] and [Mr 2] from the Trust. Why did RQIA not take enforcement action against Mr Wylie on the 2nd safe guarding report? This must be disclosed.*

The panel noted that you have not established how the second safeguarding report would assist you in relation to the charges you face. The panel bore in mind that the RQIA had a different statutory remit to that of the NMC. The RQIA regulate health and social care services and the NMC regulate individuals, namely those in the nursing and midwifery professions. The panel was of the view that you had not established relevance in your case.

In light of this the panel was not satisfied that the second safeguarding report was relevant.

15. *The Head of Adult safeguarding in the Trust claimed the figure taken was £700,000. Disclosure is needed as to how she arrived at this figure.*

The panel concluded that how the Head of Adult Safeguarding in the Trust arrived at the figure of £700,000 was not relevant for the same reasons for disclosure items 11 and 12.

15A. *Full disclosure is required on [Mr 3] actions. [Mr 3] in his witness statement claims he contacted manager in Hotel in BAY VIEW HOTEL as to where my husband slept when residents were on holiday. This again is out of [Mr 3] role and I believe breached Mr Wylie's Human Rights and a spurious attempt to discredit my husband's integrity and destroying my excellent reputation concerning the Residential Homes. I need to know on what authority he had the Power to take this action.*

The panel noted that you had not established how Mr 3's witness statement would assist you in relation to the charges you face. However, it bore in mind that Mr 3 would

be giving evidence in these proceedings and you would have the opportunity to cross examine him and attain the evidence that you require.

16. *I require all disclosure around their decision making and why NMC refused to accept their advice (see exhibit 8b)*

The panel was of the view that although the lawyers used by the NMC came to a different conclusion, the NMC's Case Examiners completed their own investigation and decided there was a case to answer. This supersedes the view of the lawyers. The panel noted that you have not established how this would assist you regarding the charges you face.

17. *I require disclosure of the fees charged by other Homes with similar registration, as after we left PVA 3 Strategy Meeting on 8th October 2008 and attended by RQIA, SHSCT care managers, SHSCT internal audit Mr and Mrs Wylie, discussing placements, transport and meals chaired by [Mr 7] SHSCT.*

The panel noted that you have not established how the fees charged by other Homes would assist you in the panel's consideration of the charges. The panel also took account of the correspondence between your former legal team and the NMC which confirmed that these polices were not available.

18. *I require full disclosure of all PVA 1-9 to ensure proper procedures were carried out from a safeguarding investigation. Reference: Safeguarding Vulnerable adults. (Regional Adult Protection Policy & Procedural Guidance Sept 2006) joint protocol PVA 1 must be completed within 24-48 hours of concern of any abuse and followed through to 9. PVA see PVA 1-9. The information is required to enable you to respond to the concerns raised and is applicable to each charge.*

The panel noted that you have not established how these PVA forms would assist you in relation to the charges you face. The panel also bore in mind that the NMC does not rely on these forms in its case against you. In light of this the panel was not satisfied that these were relevant to your defence.

The panel determined that an “inequality of arms” of the kind necessary to establish an Article 6 obligation breach had not been made out. The panel was of the view that the disclosure requests were not sufficiently specific and you have not established how these would relevantly assist you in relation to the charges you face. The panel determined that none of these disclosure items have been demonstrated by you to be relevant to your defence.

Regarding Article 6 ECHR, the panel was of the view that there were other means available to you in ensuring that there was no breach without the requirement for a production of documents order made by the panel. You were at liberty to call the individuals you have named in your disclosure application as witnesses.

The panel recognised its overriding duty to keep disclosure at the forefront of its mind. During the course of these NMC proceedings, the panel can make a direction to obtain the information it deemed necessary at a later date.

In light of all the above, the panel has decided to reject your application for disclosure.

Decision and reasons on proceeding in the absence of Mrs Wylie in relation to a discreet issue

The panel next considered whether it should proceed in the absence of Mrs Wylie on a discreet issue. It had regard to Rule 21 and heard the submissions of Mr Hayward. He drew the panel’s attention to an email the NMC received from Mr David Black who was representing Mrs Wylie on this matter. He stated:

> *“We have been engaged by Mrs Wylie (not for the substantive NMC hearing), but to review the decision handed down at close of play this afternoon by the panel to advise on their options outwith the NMC jurisdiction.*
>
> *I am requesting a short period to do that, at present I am requesting until COB on Tuesday. This is then a request by Mrs Wylie that the panel does not sit until Wednesday to afford reasonable time to consider their position.*

Mrs Wylie looks forward to hearing from you."

Mr Hayward submitted that the panel should consider fairness to Mrs Wylie and to the NMC. He submitted that it appears Mrs Wylie was seeking legal advice regarding the panel's decision on disclosure. He submitted that it would be in Mrs Wylie's interest to obtain this clarification from the panel sooner rather than later.

Mr Hayward also submitted, that in the interest of fairness to the NMC, that clarification be provided by the panel. He submitted that the panel may want to hear submissions from Mrs Wylie and the NMC in relation to drafting concerns that might give the impression that part of the disclosure request was potentially misunderstood.

Mr Hayward submitted that there would be no prejudice to Mrs Wylie for the panel to proceed in her absence on this discreet point and that it would be in her interest.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 was not absolute and was one that should be exercised *'with the utmost care and caution'*.

The panel had decided to proceed in the absence of Mrs Wylie in respect of this discreet point only. In reaching its decision, the panel had considered the submissions of Mr Hayward, the representations made on Mrs Wylie's behalf, and the advice of the legal assessor.

The panel noted that Mr Hayward's submission that there might be a concern regarding a very small part of the panel's decision regarding its clarity of expression. It was of the view that as Mrs Wylie was obtaining legal advice then it was best if the issue was clarified now and sent to Mrs Wylie.

In these circumstances, the panel had decided that it was fair, appropriate and proportionate to proceed in the absence of Mrs Wylie on this discreet issue only.

Clarification on panel decision on disclosure

Mr Hayward informed the panel that he sought clarification on its decision on disclosure items 13 and 14. It stated

13. *I require the response from the RQIA to Trust in regards to 2nd safe guarding report and what action RQIA took. Was it the same as the 1st safe guarding report? This report is referred to by NMC witnesses so I am unable to prepare my defence if I cannot get the RQIA panel verdict.*
14. *We need disclosure of these complaints to [Mr 1] and [Mr 2] from the Trust. Why did RQIA not take enforcement action against Mr Wylie on the 2nd safe guarding report? This must be disclosed.*

The panel noted that you have not established how the second safeguarding report would assist you in relation to the charges you face. The panel bore in mind that the RQIA had a different statutory remit than that of the NMC. The RQIA regulate health and social care services and the NMC regulate individuals, namely those in the nursing and midwifery professions. The panel was of the view that you have not established relevance in your case.

In light of this the panel was not satisfied that the second safeguarding report was relevant.

Mr Hayward submitted that the way the panel's response as drafted might give the impression that what was being requested in item 13 and 14 was the second safeguarding report from the Trust. Mr Hayward reminded the panel that Mrs Wylie had been provided with the second safeguarding report.

Mr Hayward submitted that his understanding on what was being requested was the RQIA decision making process in light of the Trusts second safeguarding report. Further, if a second enforcement panel had been convened by the RQIA, then what decision did they make?

Mr Hayward submitted that if the second safeguarding report had not been disclosed then this, in his view, would in fact be a disclosable document. He submitted the second safeguarding report has in fact been disclosed to Mrs Wylie.

The panel heard and accepted the advice of the legal assessor. He stated that this was a concern that should not be dealt with at this stage without the opportunity to hear from Mrs Wylie. He stated that this was not a clarification point made by Mr Wylie on behalf of Mrs Wylie and as a result this was an assumption based on Mr Hayward's understanding of the decision.

The panel took account of the submissions of Mr Hayward and the legal advice and made the following provisional amendment:

> *The panel noted that you have not established how the* ***decision making surrounding the*** *second safeguarding report in* ***item 13 and 14*** *would assist you in relation to the charges you face. The panel bore in mind that the RQIA has a different statutory remit than that of the NMC. The RQIA Regulate Health and Social Care Services and the NMC regulate individuals, namely those in the nursing and midwifery professions. The panel was of the view that you have not established the relevance in your case.*
>
> *In light of this the panel was not satisfied that the request for ~~second safeguarding report~~* ***disclosure in item 13 and 14 was relevant****.*

The panel determined that this was a provisional change subject to any submissions made by Mrs Wylie or a representative on her behalf.

Decision and reasons on application to adjourn pursuant to Rule 32

Mr Hayward referred the panel to the aforementioned email sent to the NMC by Mr Black on Mrs Wylie's behalf seeking an adjournment until Wednesday 4 August 2021. He submitted that limited information had been provided to allow the NMC to respond. On this basis, he invited the panel to consent to a shorter adjournment until 10:00

Tuesday 3 August subject to Mrs Wylie or a representative providing the panel with more detailed submissions to allow the NMC to respond properly.

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

The panel had regard to the public interest and the need for cases to be disposed of expeditiously, but it considered that there was also a strong public interest in ensuring that hearings were conducted in a manner which was transparent, appropriate and fair. However, the panel kept at the forefront of its mind that the primary objective of the NMC was the protection of the public.

The panel therefore directed Mrs Wylie or a representative on her behalf to attend on Tuesday 3 August 2021 or provide the panel with detailed written submissions regarding why she required more time.

Decision and reasons on proceeding in the absence of Mrs Wylie

Mr Hayward reminded the panel that the NMC sent the following panel's direction to Mr Wylie and Mr Black of Arthur Cox:

> *"The panel therefore directs Mrs Wylie or a representative on her behalf to attend Tuesday 3 August 2021 or provide the panel with detailed written submissions regarding why she requires more time."*

Mr Hayward drew the panel's attention to a number of emails between the NMC, Mr Black and Mr Wylie, on 3 August 2021. The NMC received a response from Mr Black at 08:27 on 3 August 2017 which stated:

> *"The writer was engaged in an all-day mediation on Monday 3 August* [sic] *and has now had the opportunity to review the panel's direction.*
>
> *Mrs Wylie is seeking legal advice and has engaged counsel in that regard for the purposes of considering the panel's decision. As this amended decision was only*

provided yesterday we will require a further short period to consider with counsel.

In fairness to Mrs Wylie and in order to afford her sufficient time to seek legal advice, bearing in mind her position as a lay litigant, we seek until close of business on Wednesday. Mrs Wylie does not wish to unnecessarily delay progress before this panel however in order to ensure that Mrs Wylie has the opportunity to seek all appropriate advice and with a view to ensuring a fair hearing we do not consider that this short period will prejudice the proper progress of the case in any way.

Mrs Wylie should be in a position to update the panel on Thursday morning. If Mrs Wylie is able to do so sooner, she will let the panel secretary know as soon as is possible…"

Mr Wylie had also responded to the NMC in an email at 09:10 which stated:

"…Just to inform the Panel that I was in contact with a couple over the week-end [PRIVATE]..."

Mr Hayward informed the panel that there was a response from the NMC at 10:17 seeking clarification of the contact Mr Wylie had with the couple he referenced. Mr Wylie, at 10:47 stated:

"[PRIVATE]."

Mr Hayward informed the panel that the NMC had responded to Mr Wylie and Mr Black, at 10:47, providing them with information that they could attend the hearing remotely. Details of how to join the hearing via the internet or via telephone were sent to Mr Wylie and Mr Black. However, Mr Wylie responded at 11:29 stating that "*I am unable to join virtually*" and did not elaborate on why this was the case.

Mr Hayward submitted that there appears to be two adjournment applications made by Mr Wylie and Mr Black.

Mr Hayward submitted that Mr Black had requested more time for Mrs Wylie to receive legal advice on the panel's decision regarding her disclosure application and wanted until the morning of 5 August 2021 to update the panel.

Mr Hayward submitted that it was implied, although not stated, that Mr Wylie was seeking an adjournment [PRIVATE].

In light of the above, Mr Hayward was inviting the panel to proceed in the absence of Mrs Wylie. He referred the panel to Rule 21(2), Rule 22(c) and Rule 33(4).

Mr Hayward referred the panel to the Notice of Hearing sent to Mrs Wylie which provided details of the hearing including the time, dates and venue of the hearing and, amongst other things, information about her right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. Mr Hayward submitted Mrs Wylie had participated in the hearing from 26 July 2021 until 30 July 2021 and was aware that the panel could proceed in her absence. Additionally, she has been provided with the opportunity to attend remotely and this has been declined. Mr Hayward submitted that Notice of this hearing has been served.

Mr Hayward referred the panel to the cases of *General Medical Council v Adeogba* [2016] EWCA Civ 162 and *Siddiqui v General Medical Council* [2015] *EWHC* 1996 (Admin).

Mr Hayward submitted that the panel provided Mrs Wylie with a clear direction. This had been ignored.

Mr Hayward reminded the panel that there was a public interest in the expeditious disposal of this case. He further submitted that there was no good reason why this hearing should not proceed.

Mr Hayward informed the panel that three witnesses, who were due to give evidence last week, had been stood down due to the time taken to address the preliminary

matters. Further, a witness has attended today. If the panel were to adjourn until 5 August 2021, then Mr Hayward submitted that he might not be able to complete his examination of this witness in the time allocated for this hearing. Mr Hayward submitted that if the panel were to adjourn until 5 August 2021, then it would effectively adjourn the hearing as a whole until a later date this year. He also informed the panel the witness works as a health professional and these delays were impacting on his work schedule. He also submitted that the witnesses have expressed to the NMC that they are losing patience because of the delays.

Mr Hayward submitted that little is known about Mr Wylie's [PRIVATE] and the potential impact on his ability to attend the hearing. However, he submitted that this does not mean that this matter should cause the hearing to be adjourned as Mr and Mrs Wylie have been provided with the opportunity to attend the hearing virtually or via telephone.

Mr Hayward submitted that Mr and Mrs Wylie may have a good reason as to why this hearing should not proceed. However, they have not provided the panel with information to explain the situation.

Mr Hayward invited the panel to proceed in the absence of Mrs Wylie.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 was not absolute and was one that should be exercised *'with the utmost care and caution'*.

The panel has decided to proceed in the absence of Mrs Wylie. In reaching this decision, the panel has considered the submissions of Mr Hayward, the representations from Mr Wylie and Mr Black made on Mrs Wylie's behalf, and the advice of the legal assessor. It had particular regard to the factors set out in the decision of *R* v *Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties.

The panel bore in mind that it had provided Mrs Wylie with a clear direction for her to attend or provide written submissions as to why she needed more time. It noted that Mrs Wylie chose not to do this, despite being provided with the opportunity to attend the hearing virtually or via telephone. The panel noted that Mrs Wylie was seeking legal advice to consider her position. It also noted that it did not have any information as to what the position was. However, it was of the view that the hearing did not need to be adjourned for this.

The panel noted that Mrs Wylie was seeking legal advice from Mr Black, of Arthur Cox, on the matter of disclosure. The panel were aware that this matter had been ongoing for some time and Arthur Cox was already aware of this and could have had a response prepared should Mrs Wylie's disclosure application be unsuccessful. The panel also reminded itself that it had determined that the issue regarding disclosure could be revisited at a later stage if it deemed a disclosure item relevant.

The panel also took into account that the notice of hearing provided details of the date and time of the hearing. In addition it contained information about Mrs Wylie's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. In light of this, it was of the view that Mrs Wylie had voluntarily absented herself.

[PRIVATE]. However, the panel considered that he could attend virtually which had now become an established practice for the NMC.

The panel also bore in mind that a number of the NMC's witnesses were due to attend and give oral evidence. It took into account the submissions of Mr Hayward and noted that a number of them have had to be stood down. Further, one has attended today to give evidence. It considered that a number of these witnesses work in the health sector and was of the view that not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services.

The panel also bore in mind that the charges related to events that occurred a number of years ago. As a result, further delay may have an adverse effect on the ability of witnesses accurately to recall events.

The panel considered the fact that Mr Wylie raised concerns regarding the length of time this hearing had taken since it formally opened in 2018. It also considered that there was a strong public interest in the expeditious disposal of the case. These were serious charges that related to financial impropriety and dishonesty.

The panel was of the view that the NMC could examine its first witness before the time allocated for this hearing expired and had to resume at a later date. At this point Mrs Wylie would be provided with transcripts.

The panel also noted that there could be unfairness to the NMC as a regulator if this hearing was adjourned due to consequential costs caused by the delay of this hearing.

In these circumstances, the panel decided that it is fair, appropriate and proportionate to proceed in the absence of Mrs Wylie.

Details of charge

That you, a Registered Nurse and Registered Manager of Hebron House and Bawn Cottage:

1. On various dates between January 2005 and December 2011, failed to meet the costs of meals at day care centres for one or more residents, up to the values as set out in Schedule A.

2. Your actions in Charge 1 were dishonest in that you sought to obtain financial advantage by allowing residents to pay for their own meals at the day care centres.

3. On various dates between 2005 and 2012, inappropriately charged Resident T additional payments for accommodation and care without clinical justification, on one or more of the occasions set out in Schedule B.

4. On various dates between April 2002 and October 2011, inappropriately charged Resident U additional payments for accommodation and care, on one or more of the occasions as set out in Schedule C.

5. On various dates between April 2005 and May 2006, inappropriately charged Resident V additional payments for accommodation and care without clinical justification, on one or more of the occasions as set out in Schedule D.

6. On one or more occasion as set out in Schedule E, overcharged residents for transport costs in that you:

    a. Did not divide the cost of group transportation amongst residents;

    b. Charged for a greater number of miles than the distance of the journey.

7. You actions in Charge 6a. and/or 6b. were dishonest in that you knowingly overcharged residents for mileage to obtain financial advantage.

8. On 21 January 2011, charged Resident X £117.60 for transport and supervision which she did not receive.

9. Your actions in Charge 8 were dishonest in that you charged Resident X for transport and supervision which you knew she did not receive.

10. On unknown dates, obtained payments from Resident B for supervision when he had not been assessed as requiring it.

11. On one or more occasions as set out in Schedule F, overcharged residents for supervision costs.

12. Your actions as set out in Charge 11 were dishonest in that you knowingly overcharged residents to obtain financial advantage.

13. Between 2009 and August 2012, allowed the Co-owner of Hebron House, Mr Wylie, to remain the appointee for Resident W when you had been told that it was inappropriate due to a conflict of interest.

14. On various dates between 2008 and 2013, inappropriately charged one or more residents for holiday costs as set out in Schedule G.

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:

    a. Did not provide the required documentation;

    b. Misled the Inspectors by saying that no additional payments were being received;

    c. Failed to provide signed agreements for Resident T and Resident U when asked;

    d. Refused to allow the Inspectors sight of the business bank account statements for Hebron House;

    e. Failed to provide an explanation for supervision charges, despite being asked on four occasions between December 2011 and 3 August 2012; and

f. Misled the Inspectors by informing them that holidays took place mainly in Northern Ireland and Ireland and that there was no further documentation in relation to holidays than was provided.

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

Schedule A

Residents	**Amount Paid from January 2005 to December 2011**
Resident A	£518.60
Resident B	£1506.90
Resident C	£1858.20
Resident D	£1899.55
Resident E	£252.90
Resident F	£459.45
Resident G	£2.65
Resident H	£239.30
Resident I	£6.20
Resident J	£7.85
Resident K	£4.50
Resident L	£17.90
Resident M	£349.30
Resident N	£51.05
Resident O	£753.90
Resident P	£22.00
Resident Q	£1600.80
	Total: £9551.05

Schedule B

Dates	**Trust Payment**	**Amount**
26 December 2005 to 29 January 2006	£184.33 per week	£40.00 per week for day care £285.67 per week for care Total: £1628.35

1 April 2009	Unknown	£241.00 per week
From 1 April 2011 to at least 1 May 2012	£360.64 per week to mid-April, £355.72 from mid-April	£362.83 per week
1 January 2011 to 28 February 2011	£360.64 per week	£2851.92 for care £170.55 for DLA for mobility Total: £3022.47
1 March 2011 to 31 March 2011	£360.64 per week	£1498.45 for care £94.75 for DLA for mobility Total: £1593.20
1 April 2011 to 30 April 2011	£360.64 per week to mid-April, £355.72 from mid-April	£1543.04
1 November 2011 to 30 November 2011	£355.72 per week	£1554.99

Schedule C

Dates	**Trust Payment**	**Amount**
April 2002 to March 2003	£271.00 per week	£119.00 per week
April 2003 to March 2004	£278.00 per week	£132.00 per week

26 May 2008 to 29 June 2008	£405.00 per week	£250.00 per week for day care Additional £195.00 per week for care Total: £2225.00
Between unknown date and 2009	Unknown	Additional £250.00 per week charged
2010 to 19 October 2011	£426.00 per week	Additional charge of around £461.00 per week

Schedule D

Dates	**Amount**
April 2005 to April 2006	Additional £120.00 per week

Schedule E

Date	Mileage	Google Maps Mileage	Destination	Cost to each resident	Residents	Total Cost	Overcharge including mileage and residents (if £0.60 is an appropriate charge per mile)
12.01.2011	35	14.4	Southern Regional College, Armagh	£21.00	R, L, S, T, N, AD	£126.00	£117.36
28.01.2011	14	14	Armagh Omniplex	£8.40	L and T	£16.80	£8.40
17.03.2011	18	14	Armagh	£10.80	X, AB, O, P	£43.20	£34.80
06.04.2011	35	10	Southern Regional College, Armagh	£21.00	E, I, Z	£63.00	£57.00
09.04.2011	44	32.8	Oxford Island	£26.40	AE, I, K, G, H, C, Z	£184.80	£165.12
28.04.2011	64	57.2	Lisburn	£38.40	Z, E, AE, A, I, AF, H, J, C, D	£384.00	£349.68
19.03.2011	3	1	Gosford Forest Park	£1.80	M and P	£3.60	£3.00
12-14.11.2011	355	73.6	Newcastle	£213.00	AE, AG, G, H, D, AH	£1278	£1233.84
04.03.2011	112	85	Omagh	£67.20	AI	£67.20	£16.20
14.05.2011	28	19.2	Scarva Park	£16.80	A, I, K, L, G, H, Z, D	£134.40	£122.88
16.05.2011	34	23.4	Craigavon	£20.40	G, C, E	£61.20	£47.16

Schedule F

Date	Residents on the Journey	Reason	Hours	Total Supervision Charge	Overcharge based on number of residents and appropriate hourly rate of £9.66 for a carer*
12.01.2011	R, L, S, T, N, AD	Trip to College	5	£450.00	£401.70
21.01.2011	N, AD, S	Art Class at Hebron House	2	£112.5	£112.5 (should not require additional supervision charge as already pay for 24 hour care at Hebron House)
29.01.2011	L and T	Armagh Omniplex	5	£112.5	£64.20
17.02.2011	P and AD	Gateway	4	£135.00	£96.36
09.04.2011	AE, I, K, G, H, C, Z	Oxford Island	3	£405.00	£376.02 (one staff member) £347.04 (two staff members)
11.04.2011	E and Z	Armagh Easter Party	4	£90.00	£51.36

14.04.2011	E, AE, H, J, Z	Art class at Bawn Cottage	2	£112.50	£112.50 (should not require additional supervision charge as already pay for 24 hour care at Bawn Cottage)
28.04.2011	Z, E, AE, A, I, AF, H, J, C, D	Lisburn	3/4	£427.50	£350.22 (based on two staff members)
14.05.2011	A, I, K, L, G, H, Z, D	Scarva Park	3/2	£292.50	£234.54 (based on two staff members)
16.05.2011	G, C, E	Craigavon	3	£101.25	£72.22

* calculated from the Trust hourly rate for a Band 2 Healthcare Assistant

Schedule G

Date	Destination	Hotel Charge	No. Residents	Total charged for accommodation per resident	Total charged for staff supervision per resident	Charge for transport per resident	Total Charge per resident	Overcharge per resident
15 to 17 May 2012	Portballintrae	£145 per person, including two dinners, two breakfasts and a lunch	16 – I, P, L, Z, K, O, E, J, R, Y, X, F, W, T, AA, U	£203.75	£232.57	£207.60	£643.92	£225.88
23 to 25 April 2012	Newcastle	£110.90	11 – H, D, AH, Q, L, S, N, M, AC, B, AB	£110.90	£154.54	£100.00	£365.44	£131.63
18 to 19 June 2011	Carlow (Ireland)	£62.61	1 - L	£290.28 (including meals for staff as well)	£337.50	£232.20	£859.98	£178.77 (only including transport and staff meals)

Background

The NMC received a referral on 1 February 2013 from the Director of Mental Health and Disability Services/Executive Director of Nursing, Southern Health and Social Care Trust ('the Trust') about Mrs Wylie.

At the time the referral was made Mrs Mildred Wylie was the Registered Person and Registered Manager of Hebron House and Bawn Cottage, two residential care homes ('the Homes'). Mrs Wylie was a registered nurse and qualified in 1975. Her husband, Mr Norman Wylie, was the Registered Provider in relation to the two homes.

In this determination reference is made to Mr and Mrs Wylie throughout. However, Mrs Wylie is the registered nurse and both names are used to provide context where applicable.

Hebron House and Bawn Cottage were registered homes for residents who have mental disorders and learning disabilities. Hebron House opened in 1988 and Bawn Cottage opened in 1993. Both Homes were registered with the Regulation and Quality Improvement Authority ('the RQIA') for a maximum of 21 and 22 residents respectively in the categories of residents with learning disabilities and with mental disorders.

As Registered Manager, Mrs Wylie was responsible for the operational running of both Homes including the safeguarding of residents and ensuring that any financial charges were appropriately levied.

The allegations can be characterised as a number of instances of financial abuse in respect of the residents of two care homes, in circumstances where Mrs Wylie was responsible in her capacity of Registered Manager and Registered Person. The allegations span the period 2002 to 2012.

There was an announced inspection by the RQIA on 9 February 2009 and a further inspection was on 27 February 2009. The concerns identified were shared with Mr and Mrs Wylie and a quality improvement plan was put in place which set out actions that Mr

and Mrs Wylie were required to address. The RQIA conducted a finance inspection on 7 and 8 December 2011.

The Trust began an Adult Safeguarding Investigation in relation to six residents, resulting in a report dated 31 October 2012. That investigation gave rise to further concerns, leading to a second investigation being conducted into 35 past and current residents. This second investigation led to a further report, dated 9 August 2013.

The two Trust reports led to further investigations by the RQIA, resulting in a finance report dated 30 January 2014. The report's conclusions led to criminal prosecutions being instituted by the RQIA in relation to both Mr and Mrs Wylie. These were stayed by the Magistrates' Court in December 2015.

The Police Service of Northern Ireland ('the PSNI') were informed of the concerns and conducted an investigation into suspicions of fraud and theft. The PSNI passed a file to the Public Prosecution Service ('the PPS') with a recommendation to prosecute, but in February 2015 the PPS directed no prosecutions.

The NMC investigation was resumed when the criminal matters came to an end.

Decision and reasons on application to adjourn pursuant to Rule 32

Mr Hayward drew the panel's attention to a letter received by the NMC from Arthur Cox dated 4 August 2021. This letter was a pre-action letter giving notice of Judicial Review Proceedings. This was in respect of the panel's decision regarding Mrs Wylie's disclosure application and its decision regarding proceeding in the absence of Mrs Wylie.

Mr Hayward submitted that Arthur Cox have made a mistake in their approach as they have addressed the letter to the "Nursing and Midwifery Council, Fitness to Practice Committee". He reminded the panel that the Fitness to Practice Committee is, for the purpose of the legal proceedings, an entity of the NMC. Mr Hayward informed the panel

that his submissions would not be for the panel to respond to. The pre-action letter for Judicial Review would be responded to by the NMC as a regulator in due course.

Mr Hayward drew the panel's attention to paragraph 11 of the letter from Arthur Cox. He submitted that this was what was intended to be placed before the panel regarding their application for an adjournment. Paragraph 11 stated:

> *"We require your formal PAP response letter within **21 calendar days** of the date of this letter. In the light of these proposed legal proceedings the Applicant respectfully contends that the extant hearing should now be adjourned for a period so as to allow the Committee to consider this correspondence, in the clear hope that some agreed resolution of this issue might still be achieved.*
>
> *In any event an adjournment of these proceedings is required for the following further reasons:*
>
> a. *[PRIVATE];*
> b. *The Applicant (and her representative) are not technically savvy enough to be comfortable to proceed remotely and, in any event, this creates an inequality of arms issue unless the NMC representative and witnesses will also be confined to remote attendance only;*
> c. *Neither the Applicant nor her representative have been advised by the Committee (or the NMC) as to which of the NMC witnesses will be called and when, undermining her ability to prepare for each witness and creating a further inequality of arms issue with the NMC;*
> d. *The Applicant is not therefore in a position to proceed with the witnesses in any event."*

Regarding point's C and D, Mr Hayward informed the panel that a case conference was held. In this conference, Mrs Wylie was informed of the names of the four NMC witnesses and it was made clear to her that the four witnesses would be called within the two weeks allocated for this hearing. He also informed the panel that the minutes of

the conference were sent to Mrs Wylie. He further submitted that there was no reason why she would not have been able to prepare for these witnesses.

Mr Hayward referred the panel to a number of emails between the NMC and Mr Wylie dated 4 August 2021. At 09:08, Mr Wylie sent the following:

> *"…I wish to put on Record before the Panel that I am very disappointed that the Panel ignored my request to Adjourn until I had received Legal Advice regarding their Determination on Friday 30th July. This determination was to be delivered at 11am, but was not handed down until close of business on 30th July. We expected to receive the decision earlier, and if not in our favour, then giving us time to seek legal advice on the way forward to ensure we received fairness. After receiving Panels decision, I reminded the Panel that as I was a lay litigant and needed to take legal advice…*
>
> *…[PRIVATE], I would like to attend on Thursday morning at 10.00 am…"*

The NMC responded at 10:14:

> *"…The panel will reconvene at 10:30 am. It has made facilities available for you to join remotely via video link or telephone…*
>
> *…The panel will be happy to facilitate a break for you to attend your [PRIVATE] and will reconvene remotely after this has been completed…"*

Mr Wylie responded at 10:18:

> *…I am on my way to [PRIVATE] as detailed in email earlier this morning so unable to dial in…*

Mr Hayward submitted that facilities were open to Mr and Mrs Wylie to attend this hearing and these facilities remained open to them. This would allow Mr Wylie the opportunity to provide the panel with reasons for adjournment. Mr Hayward submitted that there was no reason why Mr Wylie could not do this remotely. He submitted that Mr Wylie may have cogent reasons for an adjournment but he had not provided them to the panel.

Mr Hayward reminded the panel that it had concluded that Mrs Wylie had voluntarily absented herself from this hearing. He submitted that what she does as a result of her absence should not affect this hearing proceeding.

Mr Hayward submitted that nothing within the letter from Arthur Cox identified how additional time was necessary to ensure the hearing was fair nor how this was essential to protect Mrs Wylie's position.

Mr Hayward submitted that the potential overlap of the Judicial Review proceedings and these Fitness to Practice Proceedings have not been identified. He submitted that the panel have just been told that there was an overlap and that it should adjourn as a result and was not a matter the panel should concern itself.

Mr Hayward reminded the panel that a Judicial Review required leave and Mrs Wylie must apply for permission for a Judicial Review. He further submitted that there was no guarantee that this would be granted. He reminded the panel that there was no live action, presently being considered by the court and no evidence that this would be carried out.

In light of the above, Mr Hayward invited the panel to reject Mrs Wylie's application to adjourn.

The panel heard and accepted the advice of the Legal Assessor.

In relation to point A, [PRIVATE].

Regarding point B, the panel made an allowance for the point made by Mr Wylie that Mr and Mrs Wylie might not be "technically savvy" enough to be comfortable to proceed remotely. However, it was of the view that Mr and Mrs Wylie could participate effectively and remotely by telephone. It is anticipated that the time remaining could be taken up by evidence. Telephone participation would be sufficiently effective to note the evidence and make objections if so advised.

The panel were also not persuaded that Mr and Mrs Wylie's inability to join remotely creates an inequality of arms issue unless all participants were also required to attend remotely. It was of the view that it had become an accepted practice for participants at NMC hearings to attend proceedings remotely in light of the current coronavirus pandemic.

Regarding point C and D, the panel had sight of the minutes of the Case Conference, which took place on 2 July 2021 at 15:00, referred to in Mr Hayward's submissions. Additionally, the panel bore in mind that Mr and Mrs Wylie were presented with Mr Hayward's opening statement and the evidence matrix on Day 2 of this hearing. This contained details as to who the witnesses were going to be. The panel could see no reason why Mrs Wylie would not be in a position to respond to the NMC witnesses when, on both occasions, she had been informed of who they were going to be.

In light of the above, the panel were not persuaded by the submissions made within the Arthur Cox letter in regards to their application for an adjournment. It was of the view that it would not be unfair to proceed in the absence of Mrs Wylie, particularly as further delay may cause the NMC to lose its witness. The panel determined that it would start with the first NMC witness and conclude proceedings. Transcripts would then be provided to Mrs Wylie so she could cross examine the witness if that was her choice.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Hayward, on behalf of the NMC, to amend the wording of charge 4 which related to Resident U.

The proposed amendment was to remove the wording "without clinical justification". Mr Hayward submitted that Mr 3's oral evidence allowed for the possibility of some form of challenging behaviour from Resident U. However this did not meet the Trust's definition. He furthermore stated that the NMC never sought to rely upon proving challenging behaviour to prove this charge. Mrs Wylie raised questions regarding clinical justification. Mr Hayward submitted that the amendment proposed reflected the evidence as it now stands.

Mr Hayward submitted that Mrs Wylie's absence meant that she was not present to make an objection if so advised. However, this circumstance was a potential consequence of not being present.

Mr Hayward submitted that the proposed amendment would provide clarity and more accurately reflected the evidence. There was no injustice to Mrs Wylie and the amendment proposed made the charge more difficult for the NMC to prove.

4. On various dates between April 2002 and October 2011, inappropriately charged Resident U additional payments for accommodation and care ~~without clinical justification~~, on one or more of the occasions as set out in Schedule C.

The panel invited Mr Hayward to consider whether there were implications for charges 3 and 5 by removing the words "without clinical justification".

Mr Hayward submitted that his proposed amendment does not apply to charges 3 and 5. Mr 3's evidence was that Resident U never met the definition of challenging behaviour. But taking Mrs Wylie's evidence at its height, there was a theoretical possibility that Resident U could be perceived as having had challenging behaviour.

Mr Hayward submitted that this does not apply to Mr 3's evidence for Resident T. Further, nothing in his evidence in relation to Resident T suggested that there was a live question regarding clinical justification for additional payments for Resident T.

Mr Hayward further submitted that there was nothing in Mrs Wylie's case, regarding Resident T, which indicates he had challenging behaviour. He submitted that there was no live question regarding clinical justification for Resident T and Resident V, but there was for Resident U. He submitted that this amendment allowed the NMC to focus on the inappropriateness of the additional payments which was Mr 3's evidence.

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).

The panel was of the view that such an amendment, as applied for, was in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Wylie and no injustice would be caused to either party by the proposed amendment being allowed. Mrs Wylie voluntarily absented herself from the hearing and in doing so, would inevitably miss part of the hearing.

The panel was of the view that this amendment would be advantageous to Mrs Wylie as it now makes the charge more difficult for the NMC to prove. The amendment supported Mrs Wylie's assertion that there was clinical justification to support the need for additional payments regarding Resident U.

The panel considers it appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

At the end of Mr 3's evidence in chief, Mr Hayward invited the panel to consider any questions it had for Mr 3.

The panel reminded itself of its previous decision which was sent to Mrs Wylie on 3 August 2021:

> *"The panel was of the view that the NMC can examine its first witness before the time allocated for this hearing expires and has to resume at a later date. At this point Mrs Wylie will be provided with transcripts."*

In light of its decision, the panel decided that it would be unfair to proceed with panel questions for Mr 3 at that stage.

Mr Hayward reminded the panel that Mr 3 would be on oath until the hearing resumed in December 2021.

The panel determined that to do what Mr Hayward proposed would not be in accordance with the panel's previous decision.

This hearing adjourned part heard after Mr 3's evidence in chief. It would resume on 6 December 2021.

This hearing resumed on 5 December 2021.

Decision and reasons on application for hearing to be held in private

When the hearing was resumed Mr Wylie [PRIVATE]. Mr Hayward submitted that those references should be heard in private session. The application was made pursuant to Rule 19 of 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

Mr Hayward made no comments regarding this application.

The legal assessor reminded the panel that while Rule 19(1) provided, as a starting point, that hearings shall be conducted in public, Rule 19(3) states that the panel may hold hearings partly or wholly in private if it was satisfied that this was justified by the interests of any party or by the public interest.

Having heard that there would [PRIVATE], the panel determined to hold those parts of the hearing in private.

Decision and reasons on application to admit Mr 3's Safeguarding Report

During Mr Wylie's cross examination of Mr 3, he referenced a Safeguarding investigation report that Mr 3 took part in for the SHSCT. Mr Wylie asked Mr 3 why he stated, in this report, that Mr Wylie was recording him without his consent. Mr Wylie submitted that this was not true and there had been consent to record the meeting. Mr Wylie submitted that if Mr 3 was not being truthful regarding this at the beginning of this

report, then it created doubt on the veracity of the entire report. In light of this, Mr Wylie made the application under Rule 31 to allow the entirety of the report to go before the panel.

Mr Hayward submitted that the NMC's position regarding his application was neutral. He informed the panel that the NMC had this report but it was redacted. He informed the panel that by virtue of its nature as a report, it contained findings of facts, evidence and conclusions on the basis of those findings. He reminded the panel that, as a general principle, the conclusions made by other investigatory bodies were not presented to Fitness to Practice panels. This was to prevent the conclusions made by another investigatory body from influencing the panel's ability to arrive at its own independent conclusions.

Mr Hayward referred the panel to the case of *Enemuwe v Nursing and Midwifery Council [2015] EWHC 2081 (Admin)***.** He submitted that if the panel were to admit this report into evidence, it should pay no attention to the conclusion of the report when coming to its own decisions in relation to the charges. He also submitted that the panel should be wary of any questions that go beyond questioning the integrity of Mr 3 and any questions that are not relevant to the panel's consideration of the charges.

Mr Hayward submitted that it was for the panel to decide whether to admit this evidence.

Mr Wylie confirmed that he was only going to use the section of the report relating to Mr 3's statement with regards to the recording device to question his credibility.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is 'fair and relevant,' a panel may accept evidence in a broad range of forms and circumstances, whether or not it was admissible in civil proceedings. He stated that if the purpose of the line of cross examination was to attack the credibility of Mr 3, then that was a legitimate purpose to admit that part of the report which supports that line of

cross examination. However, the other parts of the report which do not fall under the application could be excluded as irrelevant unless Mr Wylie can show otherwise.

The panel gave the application careful consideration. The panel took account of the submissions made by Mr Hayward. It was of the view that it would not want to see the entire report and its conclusions as Mr Wylie had not demonstrated how it was relevant to the charges or to his attack on the credibility of Mr 3.

However, it bore in mind that Mr Wylie's intention was to question the credibility of Mr 3. It determined that it would admit into evidence the section of the report that relates to the allegation that Mr Wylie recorded Mr 3 without his consent. This would allow Mr Wylie to test the credibility of Mr 3.

The panel therefore determined that the material was relevant and that no unfairness or undue prejudice would be caused by admitting it into evidence and would attach such weight to it as it considers appropriate.

Decision and reasons on application to admit third party letter

During Mr Wylie's cross examination of Mr 3, Mr 3 stated that the residents of the Home were removed by the Trust and their respective next of kin were informed. Mr Wylie submitted that this was not true and referred to a letter from a third party in relation to a resident. This letter suggested that this resident was removed without their permission. In light of this, Mr Wylie made the application under Rule 31 to allow this letter to be put before the panel as another test of Mr 3's credibility.

Mr Hayward submitted that the NMC have not had sight of this letter. Additionally, he questioned the relevance of how and why any resident was removed from the Home was relevant to the charges.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. He reminded the panel that this was not an email addressed to Mr Wylie, rather it is from one third party to another which had

been forwarded to Mr Wylie. He stated that evidence was relevant if it had a direct bearing on the proof of truthfulness of the charges or if an issue arose regarding the credibility of a witness.

With regards to fairness the legal assessor stated that the contents of the letter might contradict the account of Mr 3, but Mr Wylie would have to demonstrate the provenance of the letter.

The panel gave the application careful consideration. However, it was of the view that it would not make a decision until Mr Wylie could prove the provenance of the letter.

The panel were made aware that Mr Wylie had a significant number of applications to make under Rule 31. The panel provided Mr Wylie with the opportunity to attain all the evidence he would like to use to cross examine Mr 3 and make a combined rule 31 application. The panel made it clear that this was a matter for Mr Wylie however, it might expedite the cross examination of Mr 3.

Mr Wylie and the NMC agreed this proposed course of action to expedite matters.

Decision and reasons on Mr Wylie Rule 31 application

Mr Wylie produced a schedule outlining the documents which was included in his submissions. He sought to adduce into evidence the following:

> ***"Item 1A, B, C***
>
> *[Mr 8] letter. Evidence family did not give consent to removal of [Ms 20]. Also that family were not informed of investigation.*
>
> ***Item 2***
>
> *Minutes of public meeting held on 7/11/12*

Item 3

Operational minutes 18/6/2014 referring to removal of [Mr 9] and [Mr 3] conversation stating Homes were closing within 48 hrs.

Item 4

Safeguarding Report by [Mr 3]...Mrs Wylie referred to safeguarding Agency in England disclosure and Barring Service.

Evidence of response of the above agency

Item 5

Statement by SHSCT CEO that residents continued to be charged up to Oct 2011 and included [Mr 3] residents' meals calculations.

Item 6

Letter from Arthur Cox to Trust confirming payment for meals on 5/12/12, bank accounts, letter from Residents Account Manager detailing repayments.

Item 7

Letter from NOK of resident..... Evidence resident never availed of dinners in Appleby day Centre. NOK has given permission for NMC to read.

Reason [Mr 3] alleged had meals in Appleby Day Centre

Item 7A

Already in bundle A15 page 142

Item 8

Remittances signed by N wylie and sent to Trust with gross rate crossed out and actual rate received written on the remittance.

Item 9 strategy meetings minutes Nov 2011 chaired by [Ms 10]

[Ms 11] representing BSO, advised meeting from her reading of Trust file, the SHSCT were aware 28/8/03 but [Mr 3] states SHSCT didn't know until 2009.

Para 37 page 14 [Mr 3] statement confirmed that evidence in File would suggest SHSCT were aware of additional payment for [Mr 12] in Dec 2005. Yet [Mr 3] states they were not aware until 2009.

Item A on same page confirms that Trust were aware in Dec 2005.

[Mr 13] Assistant Director had asked staff to seek requested confirmation from NOK/appointee if they were in agreement with this charge.

Item 10

PVA3 dated 8/10/2009

All those present at this meeting agreed to the Transport agreement to be continued.
all the care managers present who represented all the residents in Hebron house and Bawn Cottage Residential homes agreed that a move for either of these clients would be detrimental to both their physical and mental well-being.

[Ms 14] RQIA who was present at this meeting para on top up fees confirmed that if [Mr 12] and [Ms 15] were to request placements elsewhere the weekly payments would be substantially more than currently.

Item 11

Strategy meeting in Oakdale House chaired by [Ms 10] on 7/11/11 [Ms 15] states the Trust could not go back over 5 years to charge for meals.
BSO has stated legally the Trust could not require Mr Wylie to repay meals for more than 3 years.

[Ms 19] advised that Home owners have requested receipts over the 5 years period.

[Ms 10] had raised if a PVA1 had been raised regarding resident T McK to ensure correct procedures were adopted by the Trust.

Can [Mr 3]cconfirm if PVA1 was raised from his investigation?

Item 12

Letter from relative confirming she never complained

Item 13

Proof of Mr Wylie relinquishing appointeeship for [Mr 9] as [Mr 3] and [Mr 16] RQIA claimed Mr Wylie had remained appointeeship.

Item 14

Confirmation that [Mr 3] did not meet with the six residents under investigation by him prior to commencement of investigation.

Item 15

Job description of Accounts manager proof that mrs Wylie was not responsible for finance as claimed by [Mr 3].

Item 16

E mail from [Ms 15] Designator Officer Safeguarding stating the Trust has no obligation to liaise with such organisations such as Human Rights Commissioner. E Mail from Mrs Wylie as the Registered Manager raising concerns the residents who were being investigated, that their Human Rights were not being considered.

[Mr 3] investigating officer should have followed proper policy and procedures of the safeguarding policy throughout the investigation.

Item 17

Letter from Accounts Manager confirming [Mr 3] bullied her

Item 18

Letter from expert witness giving his expertise as former head of finance in RQIA for [Mr 3] allegations regarding additional Payments.

Item 19

RQIA expectations for managers role within homes and responsibility of Registered Manager.

Letters from NOK for [Mr 17] when [Mr 3] stated they complained about his fees.

Item 24

Holiday invoices as per [Mr 3] claims that we had profited from them

Item 25

E mail from Accounts manager requesting information from the Trust which they were refusing to give regarding payments for residents Transport copied into [Mr 3].

Item 26

Letters from NOK confirming residents had been removed.
[Mr 3] stated on 6/12/21 that all residents had been removed consent of NOK.

Item 27

Bawn cottage on 7/11/12 invoice for meals from [Mr 13].

Item 28

letter from Appleby Day centre notes stating LC only had lunch on Tue but Mr 3 in his investigation confirms she had meals 5 days per week.

Item 29

[Mr 3] alleged that Mr Wylie owed 3 meals per week for Mck but Appleby Day-care notes confirms she had only 1 meal per week (Thursday)

Item 30

Letter from [Mr 18] step sister confirming additional payments was agreed by social worker and increased annually.

Item 31 [not addressed by Mr Wylie]

Require last page of Safe guarding report dated 31 October 2012 confirming [Mr 3] name since he has stated on 6/12/21 that it was a Corporate report and many were involved in compiling it."

Mr Wylie submitted that Mr 3 stated in his oral evidence that residents were removed from the Home without consent. He submitted that removal of residents and the reasons why were central to Mr 3's safeguarding report. Mr Wylie submitted that items 1A, B and C demonstrated that residents were not removed with consent and these emails were from a resident's next of kin.

With regards to item 2, Mr Wylie submitted that these were minutes of a meeting where the foster sister of one of the residents was not informed that her brother was being removed from the Home. He also submitted that many family members of the residents were present at the meeting and stated that they were not informed. Mr Wylie also informed the panel that PVA forms must be completed to remove residents from the Home.

With regards to item 3, Mr Wylie submitted that this questioned the credibility of Mr 3 with regards to his assertion that residents were removed from the Home with consent.

With regards to item 4, Mr Wylie submitted that you were referred to the DBS regarding the issues disclosed in the safeguarding report and they found that there were no issues of concern.

With regards to item 5, Mr Wylie submitted that this refers to charges regarding day care meals. He submitted that you were accused of taking in excess of £20,000 with regards to meals and this was disproved.

With regards to item 6, Mr Wylie submitted that Mr 3 stated that you did not advise the Trust or the relatives that you had paid back what was overcharged. He submitted that item 6 was a response to the Trust by Arthur Cox confirming payment was made on 5 December 2012.

With regards to item 7, Mr Wylie submitted that Mr 3 stated that the Home had charged a resident for meals. The next of kin of this resident confirmed that this resident did not take meals at the Home.

With regards to item 7A, Mr Wylie submitted that this document demonstrated that the Trust were aware between August 2002 to 2005. Mr 3 stated that the Trust were not aware until 2009.

With regards to item 8, Mr Wylie submitted that this was relevant with regard to the claim by Mr 3 that a number of residents were overcharged for care and the top up fees were not agreed and the Trust was not aware. The document showed that the Trust were aware of this.

With regards to item 9, Mr Wylie submitted this was a strategy meeting of the Trust and related to the dates when the Trust became aware of the top ups being made.

With regards to item 10, Mr Wylie submitted that this was relevant to what Mr 3 stated regarding additional payment, appointeeship and transport. Mr 3 stated that you were illegally charging for transport, however you were just following the transport policy agreed.

With regards to item 11, Mr Wylie submitted that Mr 3 submitted that this was a strategy meeting held by Ms 10. At this meeting it was stated that the Trust could not legally backdate charges for meals more than three years. Mr Wylie submitted that there should have been a PVA 1 and there should have been an invoice provided to him for the meals as per normal business practice.

With regards to item 12, Mr Wylie submitted that Mr 3 had stated that Resident B's sister raised a complaint that instigated the investigation starting. There was a letter from her stating that she did not raise any complaint.

With regards to item 13, Mr Wylie submitted that Mr 3 claimed that Mr Wylie did not relinquish apointeeship for a resident. This letter proved otherwise.

With regards to item 14, Mr Wylie submitted that this confirmed that Mr 3 did not meet with six residents prior to the commencement of his investigation.

With regards to item 15, Mr Wylie submitted that there was an allegation by Mr 3 that you were in charge of finance. This item, a job description of the accounts manager proves otherwise.

With regards to item 16, Mr Wylie submitted that these were emails from the designated officer who stated that the Trust has no obligation to liaise with organisations such as the Human Rights Commission.

With regards to item 17, Mr Wylie submitted that an allegation was made that you bullied the Home's accounts manager. He submitted that this was raised when Mr 3 was giving evidence. He submitted that this letter demonstrated otherwise.

With regards to item 18, Mr Wylie submitted that Mr 3 alleged that you were charging residents without their permission. He submitted that this letter explained how and why you were being paid.

With regards to item 19, Mr Wylie submitted that these were the expectations that the RQIA have for home managers.

Mr Wylie acknowledged that his written list of documents contained some errors in that he had missed items 20, 21, 22, and 23. Furthermore item 23 did not exist. However, he made submissions on 20A, 20B, 21 and 22:

With regards to item 20A and 20B, Mr Wylie submitted that Mr 3 had stated that relatives of the residents complained that they were being charged additional money without permission. These letters showed how happy the relatives were with your treatment of them.

With regards to item 21, Mr Wylie submitted that this proved why a PVA should be raised.

With regards to item 22, Mr Wylie submitted that this was a letter from the Chief Executive of the Trust stating and confirming what Mr 3 said regarding residents removal with their consent.

With regards to item 24, Mr Wylie submitted that this explained the rationale behind holiday charges.

With regards to item 25, Mr Wylie submitted that this related to the transport charges.

With regards to item 26, Mr Wylie submitted that spoke to Mr 3's assertion that residents had been removed with the consent of the next of kin.

With regards to item 27, Mr Wylie submitted that this spoke to the allegation of overcharging for meals and where the figure comes from.

With regards to item 28, Mr Wylie submitted that Mr 3 claimed that a resident had meals five days a week and the item proved it was only lunch on a Tuesday.

With regards to item 29, Mr Wylie submitted that Mr 3 claimed that a resident had meals three days a week but this item proved the resident had meals one day per week.

With regards to item 30, Mr Wylie submitted that this was a letter from Resident U's sister confirming that he was not charged additional payments without consent.

Mr Wylie made no submissions with regards to item 31.

Mr Hayward set out the NMC's position on each item presented by Mr Wylie.

With regards to item 1a, 1b and 1c, Mr Hayward submitted that this evidence was not consented to on the basis that it was not relevant. He submitted that Mr Wylie wanted to admit these documents into evidence to challenge the credibility or Mr 3 with regards to how residents were removed from the Home. He submitted that this was one limb of a broader challenge to the way in which the Trust investigated the Home which was

outside the purview of what was before the panel. He submitted that any questions in this regard were irrelevant.

With regards to item 2, Mr Hayward submitted that this again commented on the manner in which residents were removed from the Home. He submitted that this was not relevant and Mr Wylie has not demonstrated how he proposed to prove the truthfulness of the document.

With regards to item 3, Mr Hayward submitted that he had no issue with the provenance of the document. However, he submitted that his comments on the manner or the removal of residents was not relevant. He also submitted that this document contained hearsay and would be problematic even if the panel determined that it was relevant.

With regards to item 4, Mr Hayward submitted that he was not sure how this related to any of the charges or challenged the credibility of Mr 3.

With regards to item 5, Mr Hayward submitted that he has no issue with the provenance of the document. He reminded the panel that Mr Wylie submitted that it was relevant as it identified discrepancies with charges relating to day care meals. He drew the panel's attention to Schedule A and reminded the panel that the total in question was approximately £9,500 and not the disputed figure within the document. In light of this, Mr Hayward submitted that item 5 was not relevant.

With regards to item 6, Mr Hayward submitted that part of this document was an extract from a letter from Arthur Cox. He reminded the panel that this letter was already in evidence. With regards to the rest of the document, Mr Hayward submitted that Mr Wylie had not given an indication as to how this document was to be proved. Additionally, the documents spoke to whether charges for meals were repaid to residents. Mr Hayward submitted that this was not the issue before the panel. He reminded the panel that under charge 1, the question was whether there were improper charges for day care meals to begin with. He submitted that whether they were repaid was irrelevant.

With regards to item 7, Mr Hayward submitted that the NMC was neutral on this item. However, he submitted that there was no indication from Mr Wylie regarding how this document was intended to be proved. He drew the panel's attention to schedule A and reminded it that the amount at issue with regards to Resident I was £6.20 not the amount of £662.40 within the document.

With regards to item 7A, Mr Hayward said that Mr Wylie had correctly stated that this letter was already in evidence.

With regards to item 8, Mr Hayward submitted that it was not clear as to how it was relevant. He submitted that whether the Trust knew how payments were being made was irrelevant. He submitted that if the panel was of the view that this document was relevant, the problem was that Mr Wylie provided it and he had not indicated who annotated it. Therefore, this document cannot be proven and Mr Hayward objected to this document being admitted on the grounds of fairness.

With regards to item 9, Mr Hayward reminded the panel that Mr Wylie submitted that this was relevant as there was a dispute as to when the Trust became aware of potential irregularities at the Home. Mr Hayward submitted that this was irrelevant but he had no issue with the provenance of the document.

With regards to item 10, Mr Hayward consented to this being admitted into evidence.

With regards to item 11, Mr Hayward submitted that this related to how day care meals were repaid which was not relevant. He also submitted that the secondary issue regarding a PVA document speaks to how the Trust conducted its investigation. He submitted that this was also not relevant.

With regards to item 12, Mr Hayward submitted Mr Wylie submitted that this contradicted your understanding of Mr 3's evidence of a complaint made. He submitted that how the irregularities at the Home came to the attention of the Trust was not relevant to the NMC. He also submitted that there was no indication as to how this document was going to be proved.

With regards to item 13, Mr Hayward informed the panel that this was a letter signed by Mr Wylie. One of the names mentioned was Resident W who was the subject of charge 13. He submitted that this was potentially relevant but there was no indication as to who the letter had been addressed to. He submitted that only Mr Wylie could prove this but reminded the panel that being your representative had precluded him from giving evidence. As a result, Mr Hayward submitted that this document could not be proven as Mr Wylie could not be cross examined. He submitted that he objected to this document as a result. He added there might be another way of proving this document.

With regards to item 14, Mr Hayward submitted that this related to how the Trust conducted its investigation which was not a matter for the panel. He submitted that this document was irrelevant. He also submitted that there was no indication as to how this document was going to be proved.

With regards to item 15, Mr Hayward submitted that the NMC was neutral. However he raised the issue with regards to its provenance and the fact that there was no indication as to how this document was going to be proved.

With regards to item 16, Mr Hayward submitted again that this related to how the Trust conducted its investigation which was not a matter for the panel. Additionally, there was no indication as to how this document could be proved.

With regards to item 17, Mr Hayward submitted that this was not relevant to any of the charges. He submitted that if the panel were to admit it into evidence, then he objected to this as the contents of the document amounted to hearsay. He submitted that there was no indication as to how this document was to be proved. Additionally, serious accusations were being made within this document and it would be unfair to admit it without the author being present at this hearing to be cross-examined.

With regards to item 18, Mr Hayward submitted that Mr 5 had been involved in the investigation as an employee of the RQIA. Mr 5 was then retained by yourself and Mr Wylie as a purported expert witness. He submitted that item 18 was hearsay and Mr 5

had adopted a difficult position and it would be difficult to admit this without provenance and without Mr 5 being present to be cross-examined.

With regards to item 19, Mr Hayward submitted that no reason was given by Mr Wylie as to its relevance.

With regards to item 20, Mr Hayward submitted that this was a duplicate of item 12.

With regards to items 20A and 20B, Mr Hayward submitted that it was not clear how this is relevant to the charges. He further submitted that it was not clear how it was proposed to be proved.

With regards to item 21, Mr Hayward submitted that this related to the Trust investigation which was not relevant to the matters before the panel.

With regards to item 22, Mr Hayward submitted that this related to how residents were removed from the Home which was not relevant. He submitted that he had no objection as to its provenance.

With regards to item 23, Mr Hayward submitted that this does not appear to exist.

With regards to item 24, Mr Hayward submitted that the first page of this document was already in evidence before the panel, however it was not clear where the annotations came from. He submitted that the second page was hearsay and there was no indication as to how it was going to be proved. He reminded the panel that the third page was a copy of Schedule G. Mr Hayward submitted that the rest of the document might be relevant but it was not clear how this was going to be proved.

With regards to item 25, Mr Hayward submitted this was not relevant and there was no indication as to how this was going to be proved.

With regards to item 26, Mr Hayward submitted that this was not relevant as it spoke to the manner with which the residents were removed. He submitted that it was not

relevant to the charges. He submitted that it also spoke to the Trust investigation which was not relevant. Mr Hayward submitted the accusations made within this document were serious and it would be unfair to admit it without the author being present at this hearing to be cross-examined.

With regards to item 27, Mr Hayward submitted that the meal amount within this document was not being considered under charge 1. He submitted that it was irrelevant as a result.

With regards to item 28 and 29, Mr Hayward submitted that there was no indication if this was in evidence. If it was not, then Mr Hayward submitted that there was no indication as to how it could be proved.

With regards to item 30, Mr Hayward submitted that it was not relevant and there was no indication as to how this was to be proved.

Mr Hayward made no submissions with regards to item 31.

Panel's Decision

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

With regards to item 1A, B and C, the panel determined not to admit these items at this stage as Mr Wylie had not demonstrated how they were relevant. Additionally, the panel considered that it would be unfair to question the credibility of Mr 3 in this way as Mr Wylie has not indicated to the panel how he intended to prove the contents of these items.

The panel considered that it was not fair within the meaning of Rule 31 to attack a witness's credibility based on a document that was not supported by a witness statement or other means to ascertain its contents. At best, the document suggested that in one case, one relative of a resident was unware of the intended removal of one

resident. This was not a fair basis on which to suggest that Mr 3 has falsified his evidence that the residents were not consulted. The writer of the email Mr 8, had not been called as a witness. His email comes to the attention of the panel through a third party who passed it to Mr Wylie. The email was being used for a purpose that went beyond what the contents of the email could support. The NMC would not be able to cross-examine the writer in order to test the truthfulness of the contents of the email or the limits that the contents legitimately could be used for in closing submissions to the panel at fact finding. The panel therefore decided not to admit the document at this stage.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addresses the panel's reasons under Rule 31 for not admitting the document.

With regards to item 2, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item, for instance by calling the author of the document as a witness. In light of this, the panel was of the view that it would be unfair to admit this item. The NMC would be unable to cross-examine the author of this document.

With regards to item 3, the panel determined not to admit this into evidence. The panel considered that it might be relevant to Mr Wylie's questioning of the credibility of Mr 3. However, it bore in mind that the contents of the document amounted to hearsay and the author was not present to be cross-examined and substantiate the details. The panel recognised that hearsay and the author can be used by a party in cross-examination and hearsay alone was not a sufficient reason to exclude a document in any event. However, the NMC would be unable to challenge the contents of the document which was relied on by Mr Wylie as being a true account of the matters referred to in the document. That would not be fair within the meaning of Rule 31.

However, the panel would re-consider Mr Wylie's application if he raised it again and addresses the panel's reasons for not admitting the document. In such circumstances,

he could offer to call the author of the document to the hearing to be cross examined by the NMC so that the evidence could be fairly tested.

With regards to item 4, the panel determined not to admit this into evidence. Mr Wylie has not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that the document was irrelevant and it would be unfair to admit this item.

With regards to item 5, the panel determined to admit this into evidence. It accepted that this was relevant to the charges and it provided the panel with an opportunity to cross reference the NMC's calculations relating to charge 1 as suggested by Mr Wylie.

With regards to item 6, the panel accepted that the first page was already in evidence. It also accepted that the bank statements were relevant to charge 2 as they summarised the amount allegedly paid back to residents. It had therefore determined to admit the document apart from the letter on the final page. It was of the view that Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove this.

With regards to item 7, the panel determined to admit the first letter (item 7A) into evidence as it was relevant to the charges related to overcharging for meals. However, with regards to the second letter (item 7B), Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit item 7B.

The panel accepted that item 7A was already in evidence.

With regards to item 8, the panel determined not to admit these into evidence. It was of the view that there was no proof of provenance and the panel could not authenticate it.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 9, the panel determined to admit this into evidence as it was relevant to a number of the charges that related to additional payments.

With regards to item 10, the panel determined to admit this into evidence as it was relevant to the charges. It noted that Mr Hayward also accepted this.

With regards to item 11, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item for the same reason given above for other unauthenticated documents.

With regards to item 12, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. It was also of the view that to admit this item would be unfair to Mr 3 as the author of the document was not present to be cross examined.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 13, the panel determined not to admit this into evidence. It was of the view that there was no proof of provenance and the panel could not authenticate it.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 14, the panel determined not to admit this into evidence. Mr Wylie has not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 15, 16 and 17, the panel considered each of these items carefully and determined not to admit them into evidence. Mr Wylie had not demonstrated to the panel how they were relevant to the charges and there was no indication as to how he intended to prove these items. It was also of the view that to admit them would be unfair to Mr 3 as the authors of these documents were not present to be cross examined.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 18, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. It was also of the view that to admit this item would be unfair as the author of the document was not present to be cross examined.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 19, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 20A and 20B, the panel considered each of these items carefully and determined not to admit them into evidence. Mr Wylie had not demonstrated to the panel they were relevant to the charges and there was no indication as to how he

intended to prove them. In light of this, the panel was of the view that it would be unfair to admit these items.

With regards to item 21, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 22, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. It was also of the view that to admit this item would be unfair to Mr 3 as the author of the document was not present to be cross examined.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 24, the panel noted that it already had this in evidence albeit without the handwritten annotations. It determined not to admit the document. Mr Wylie has not demonstrated to the panel how the annotated document was relevant to the charges and there was no indication as to how he intended to prove the annotations and the supplementary pages added to the material already in evidence. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 25, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 26, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. It was also of the view that to admit

this item would be unfair as the author of the document was not present to be cross examined.

However, the panel would re-consider its position if Mr Wylie made a later application to admit it which addressed the panel's reasons under Rule 31 for not admitting the document.

With regards to item 27, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges, or the other evidence before the panel, and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 28, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 29, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

With regards to item 30, the panel determined not to admit this into evidence. Mr Wylie had not demonstrated to the panel how it was relevant to the charges and there was no indication as to how he intended to prove the item. In light of this, the panel was of the view that it would be unfair to admit this item.

The panel did not consider item 31 at this stage as Mr Wylie had not made verbal submissions in relation to it and the NMC had not had an opportunity to respond.

Circumstances preceding a decision on proceeding in the absence of Mrs Wylie

On 8 December 2021, at the end of Mr Wylie's Rule 31 application but before the panel had made its decision, it was informed by Mr Hayward that Mr 3 was only available to give evidence from 6 December 2021 to 8 December 2021. As a result, Mr Wylie would not be able to continue his cross-examination of Mr 3. Mr Hayward informed the panel that Mr 3 would have to provide evidence at another time to be determined. He proposed that the hearing continue with the remaining NMC witnesses.

Mr Wylie opposed this. He submitted that he had prepared his line of questioning for Mr 3 and wanted to continue when Mr 3 was next available and not, as Mr Hayward proposed, start with the next NMC witness.

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

The panel determined to proceed with Mr Hayward's proposal and start with the next available NMC witness. The panel was of the view that Mr Wylie had only just started his cross examination of Mr 3 before he had to make his Rule 31 application. It also bore in mind that Mr Wylie would be provided with transcripts of his cross examination of Mr 3 as was done at the end of Mr Hayward's examination of Mr 3. Further, the panel determined that Mr Wylie could start his cross-examination of Mr 3 again. In light of this, the panel concluded that it would continue with the hearing and begin with the next NMC witness on 13 December 2021.

The panel provided Mr Wylie with another opportunity to attain all the evidence he would like to use to cross-examine the remaining NMC witnesses available and make a combined Rule 31 application. The panel were made aware that Mr Wylie had a significant number of applications to make under Rule 31. The panel made it clear that this was a matter for Mr Wylie however, it may expedite the cross examination of Mr 16.

Mr Wylie and the NMC agreed this as a course of action to expedite matters. It was decided that Mr Wylie would prepare his Rule 31 application and be ready to present it to the panel on 10 December 2021 after the panel handed down its decision regarding Mr Wylie's original Rule 31 application for Mr 3.

Decision and reasons for proceeding in the absence of Mrs Wylie

[PRIVATE]

NMC observations regarding the absence of Mrs Wylie

[PRIVATE]

Decision and reasons on proceeding in the absence of Mrs Wylie

[PRIVATE]

Decision and reasons on proceeding in the absence of Mrs Wylie

[PRIVATE]

Decision and reasons on application to admit video link evidence

The panel heard an application made by Mr Hayward under Rule 31 to allow Mr 3 and Mr 21 to give their respective evidence over a video link. Mr Hayward informed the panel that Mr 3 and Mr 21 would not be present at this hearing and explained they were both unable to attend in person. He submitted that their respective evidence was clearly relevant as it spoke to the background of the concerns raised. Further, as a result of Mr 3 and Mr 21 giving their evidence via video link, he submitted that the panel would be able to test their evidence just as it would if they were both physically present.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provided that, so far as it is 'fair and relevant', a panel may accept evidence in a range of forms and circumstances, whether or not it was admissible in civil proceedings.

The panel gave these applications in regards to Mr 3 and Mr 21 serious consideration. The panel noted that both their statements had been prepared in anticipation of being used in these proceedings and contained the paragraph, '*This statement … is true to*

the best of my information, knowledge and belief' and signed by them. It also determined that their evidence was clearly relevant.

The panel considered fairness to Mrs Wylie, however, it noted that she had voluntarily absented herself from these proceedings.

The panel noted that Mr 3 and Mr 21 have confirmed they will be present via video link, so it will be able to test their evidence just as it would if they were both physically present.

The panel also noted that, in light of the coronavirus pandemic, the majority of the NMC proceedings have been taking place via video link. As a result, the panel was well accustomed to conducting hearings in this way.

In these circumstances, the panel came to the view that it would be fair and relevant to allow Mr 3 and Mr 21 to give evidence remotely via the video link, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on Mr 5's status as an expert witness

During the evidence of Mr 5, Mr Hayward submitted that he had heard Mr 5 state that he had never been told that he was an expert witness. He then submitted that when Mr 5 later stated "that has always been my understanding." Mr Hayward submitted that he took that statement as Mr 5 saying that he was in fact an expert witness.

Mr Hayward submitted that it was clear that Mr 5 was not an expert witness, but this needed to be clarified before he gave any other evidence. He submitted that this affects the nature of the evidence Mr 5 gives and how the panel should hear this evidence.
The panel heard and accepted the advice of the legal assessor.

Mr Hayward submitted that another issue he would like to raise would depend on whether Mr 5 was an expert witness. He submitted that this would be in regards to the

weight the panel placed on the evidence of Mr 5. He submitted that if Mr 5 was not an expert witness, then he would make submissions regarding this.

Mr Hayward submitted that at this stage, he would invite the panel to hear submissions as to whether or not Mr 5 was an expert witness and make a determination on this point before resuming Mr 5's evidence.

Mr Wylie submitted that Mr 5 was introduced to him as an expert witness by your previous representatives at Arthur Cox.

Mr Hayward submitted that an expert witnesses' primary duty was to the adjudicator and must be independent. He submitted that if the expert witness was not independent then they could not be an expert witness. This was because they were speaking on behalf of a party and have a duty to that party, not to the adjudicator.

Mr Hayward submitted that he was not privy to the conversation between your former representatives and yourself. He submitted that it was entirely possible that Mr 5 was introduced to you as an expert. He submitted, however, that there was a difference between an expert and an expert witness.

Mr Hayward submitted that someone who has an expertise in a field could be retained by solicitors in order to get advice. He submitted, however, that if these experts were involved in advocacy on behalf of the client, they would not be in a position to be called expert witnesses.

Mr Hayward drew the panel's attention to Mr 5's witness statement which stated:

> *"…I carried out an exercise to establish what each resident may have overpaid from their DLA which should be refunded…"*

Mr Hayward submitted that this was an instance of Mr 5 being employed by you for advocacy purposes, or for representational purposes, or to carry out an activity on their behalf specifically in this contested context between yourself and the Trust. He

submitted that this was one example of why Mr 5 might have a certain expertise, he could not be an expert witness for these proceedings.

Mr Hayward invited the panel to make a determination as to whether Mr 5 was providing evidence as an expert witness or providing evidence as your witness.

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

Mr Wylie stated that Arthur Cox introduced and supplied Mr 5 to him and yourself as an expert.

Mr Hayward submitted that while Mr 5 mightbe an expert, he cannot be considered by the panel as an expert witness. He submitted, respectfully, that this was because his involvement has gone beyond an objective assessment in various situations. He submitted that an example of this was in relation to transport costs and providing potential objective solutions to espousing your position and advocating that position in a way that goes far beyond what any independent person would do.

Mr Hayward drew the panel's attention to "Practice Direction No.1 of 2015 In The High Court Of Justice In Northern Ireland Queens Bench Division (Commercial)" in relation to expert witnesses. This sets out the duties of expert witnesses in Northern Ireland and a statement they are expected to sign. He submitted that the direction does not apply to these proceedings but it might be useful for the panel in explaining what exactly makes an expert witness independent and how their evidence should be presented in court.

Mr Hayward also referred the panel to the case of *Towuaghantse v GMC [2021] EWHC 681 (Admin)* which relates to the independence of experts. He submitted that if there was apparent bias, then expert witness was not independent and could not be seen as an expert witness. He submitted that both the nature of Mr 5's involvement with yourself and Mr Wylie and the substance of his witness statement, both demonstrate apparent bias.

Mr Hayward invited the panel to make a determination that Mr 5 was not an expert witness.

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

The panel took account of the case of *Towuaghantse* which stated:

> *"Apparent bias will be found to exist where the reviewing court or tribunal, attributing to the reasonable man knowledge of the relevant circumstances and adopting a broad approach, assesses on behalf of that reasonable man that there is a real danger of bias"*

The panel bore in mind that Mr 5 had been employed by RQIA and would have had prior sight of the reports used to investigate you. It also noted that he expresses a clear view about this. The panel also considered that Mr 5 would have been involved in the RQIA directions in relation to its investigation against you.

The panel also took account of the fact that Mr 5 was subsequently employed by you to develop policy around transport. It also noted that he had attended police meetings on your behalf. In light of Mr 5's employment with RQIA, the panel was of the view that there was a potential conflict of interest.

The panel had regard to the "Practice Direction No.1 of 2015 In The High Court Of Justice In Northern Ireland Queens Bench Division (Commercial)" with regards to Expert Evidence. Under the title of "Duties and obligations of experts" it stated:

> *"…Experts should confine their opinions to matters which are material to the disputes and provide opinions only in relation to matters which lie within their expertise. Experts should indicate without delay where particular questions or issues fall outside their expertise…"*

The panel was of the view that Mr 5's witness statement had strayed beyond this. Additionally, it noted that there appeared to be an apparent bias in Mr 5's witness statement.

As a result, the panel concluded that Mr 5 will be classed as an expert but not an expert witness.

[PRIVATE]

[PRIVATE]

Decision and reasons on Mr Wylie's request for panel to reconsider its position on disclosure

Mr Wylie submitted that he had repeatedly requested why at a hearing in Stormont Hotel, on 26 March 2013, the NMC said that you had been investigated for financial abuse of vulnerable patients. He said that it was alleged that the abuse had occurred over a 20-year period. At this hearing it was stated that although the final amount has yet to be calculated, it was estimated to be a seven-figure sum. He also submitted that this sum was featured in a press release.

Mr Wylie submitted that if the NMC has stated that the seven-figure sum has yet to be calculated, then why has it not disclosed the exact amount after nine years of investigating.

Mr Wylie said that if the panel was independent of the NMC, then it should request that the details of the seven-figure sum be disclosed with immediate effect in the interest of fairness to you.

Mr Wylie submitted that this false statement has caused you [Private].

Mr Wylie also submitted that the panel had assured you that it would keep under review its decision not to grant you disclosure of police witness statements. He submitted that

since this decision was made, the panel had not advised you of any reviews that had taken place.

Mr Wylie submitted that if the panel was independent then why would it not see the witness statement of Ms 4 as important.

Ms Kennedy submitted that it was her understanding that this matter was raised with another colleague, but that she would need time to clarify this.

The panel also confirmed that it was unaware of any hearing at the Stormont Hotel. Mr Wylie said that he had two main areas of concern. The first was in relation to a press release which referenced the seven-figure sum. The second was that this panel had not reviewed disclosure as it previously said it would. This was particularly in relation to the witness statement of Ms 4.

Regarding the seven-figure sum, Ms Kennedy submitted that this was mentioned by the referrer, Mr 1, over 10 years ago. She submitted that the reason this was before the panel was because it was introduced by Mr Wylie in his opening statement. She submitted that this seven-figure sum does not form part of the NMC's case and was not reflected in the charges.

Regarding bias in relation to the seven-figure sum, Ms Kennedy submitted that there can be no bias when it was Mr Wylie who introduced the seven-figure sum as part of your case. She submitted that if Mr Wylie wants to allege that this was a malicious referral then he can do so as part of his case. She reminded the panel that this seven-figure sum, does not form part of the NMC's case.

Regarding the press release, Ms Kennedy submitted that this was the first she had been made aware of this. She submitted that this does not form part of the NMC's case.

Regarding the issue of disclosure of the police witness statements, Ms Kennedy submitted that Mr Wylie can make an application to request them via other means. She

submitted, however, that this should not interrupt this stage of the hearing as you were not giving evidence regarding police statements.

The panel reminded Mr Wylie that the issue of the seven-figure sum, the police witness statements and Ms 4's witness statement had already been raised and a determination had been made. The panel asked Mr Wylie if he had any new information that would undermine its original decision.

Mr Wylie submitted that the NMC made the statement regarding the seven-figure sum not yet being calculated and not Mr 1. He submitted that the NMC should provide the evidence for this amount as they have had over nine years to do so. He submitted that this statement appeared in a transcript from the hearing at Stormont Hotel, but he was not sure what particular hearing it was. He submitted that the press were present at some of the hearings, but it may have been leaked to them by the NMC.

Mr Wylie submitted that Resident U's stepsister stated that she was aware that Ms 4 agreed with the Office of Care and Protection and Resident U's stepfather the amount of money to be allocated to Resident U. However, he submitted that the Trust are stating that Ms 4 did not know how much had been allocated for Resident U.

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

The panel reminded itself that you had previously made a request pertaining to how the Trust came to the seven-figure sum. In its determination, made on 30 July 2021, the panel stated:

> *"The panel noted that the NMC was not relying on the seven figure sum as part of its case and the panel was not satisfied that it was relevant and would assist your defence."*

The panel noted that when it had asked Mr Wylie if anything had changed in this regard, he was unable to assist the panel. In light of this, the panel was satisfied that its original decision was clear.

With regards to bias in relation to the seven-figure sum, the panel noted this was first introduced by Mr Wylie at this hearing. It also noted that it had neither seen the press release referenced by Mr Wylie nor was it aware of any other media coverage.

The panel considered that Mr Wylie's information regarding the press release did not impact on the facts of this case, and the panel would put it out of its mind. The panel wished to emphasise that the information provided today by Mr Wylie did not make any difference to its deliberations or consideration of your evidence or that of any of the witnesses. The information had not influenced the panel in anyway. No reasonable person would perceive the panel to be biased based on this material.

With regards to the police witness statements and the witness statement of Ms 4, the panel was of the view that Mr Wylie had not presented the panel with any new information that would undermine its original decision made on 30 July 2021.

The panel was of the view that Mr Wylie could have taken numerous steps to assist his case in the intervening period. It noted that Mr Wylie could have made arrangements to contact other witnesses he thought relevant to your case. Additionally, and if required, he could have gone to the High Court to request that these witnesses be present for this hearing.

In the absence of any new information before the panel, it was of the view that its original decision regarding disclosure stands.

The panel recognised its overriding duty to keep disclosure at the forefront of its mind and noted it could still make a direction to obtain the information it deemed necessary at a later date should any new information come to light. The panel reminded itself that disclosure of documents could be justified if they were likely to support your case or to undermine the NMC case against you. Further, disclosure could be justified if the panel was satisfied that it was necessary in order to fairly dispose of the case.

Decision and reasons on application to adjourn pursuant to Rule 32

[PRIVATE]

Decisions and reasons on how to proceed in light of your evidence in chief

Mr Hayward identified an issue in respect of your evidence-in-chief. In answers to questions from Mr Hayward, you stated that you had no knowledge of financial matters. Your evidence, you said, was that you relied on Mr Wylie and the Home's finance manager to deal with all financial matters. Where your evidence in chief appeared to adopt an understanding and involvement in financial matters relating to the Home and to the residents, you were merely reading out a statement prepared for you by Mr Wylie. That evidence was his evidence, which he could not supply directly because he was your representative.

Mr Hayward reminded the panel that witnesses were required to give personal evidence and cannot act as a substitute for someone else. He said that your evidence in chief should be treated as being all your own testimony, but in which you adopted the material supplied to you as being your own testimony. Accordingly, all of the material became your evidence and was subject to cross-examination by him.

An issue however was identified by the legal assessor. The panel had an obligation to provide both parties with a fair hearing within a reasonable time. It might be unfair to the NMC to require it to ask questions and later make submissions on evidence which might then be challenged by you as being a wrong understanding of your testimony. The panel would then face the task of deciding what parts of your testimony could be regarded as fair and relevant under Rule 31. The panel would then have to decide for itself what parts might have to be excluded under that Rule. The panel may not be able to do this satisfactorily which might result in conclusions being reached on the evidence which were disputed as not being based on valid evidence or being a misunderstanding of the evidence.

Mr Hayward submitted that the NMC want the panel to consider the issue of fairness in terms of either proceeding with cross examination or not.

Mr Hayward invited the panel to proceed but asked the panel to consider for itself if this was the appropriate course. He submitted that the formalities that govern the giving of your evidence have been observed.

Mr Hayward reminded the panel that a statement was provided by you. He submitted that you signed a declaration of truth on the front page which confirmed that this was your statement and your exhibits. He submitted that you took an oath where you swore to give your own evidence.

Mr Hayward submitted that it was not unusual for witnesses to rely on third party evidence when giving their own evidence. He also submitted that when third party evidence was adopted by you, it then becomes your evidence.

Mr Hayward invited the panel to proceed on the basis that the evidence you have given was your own evidence albeit some of this evidence had been gathered from other sources. He submitted that it was only fair for him to highlight the potential consequences for your case in adopting this approach. He submitted that there will be contradiction between your evidence in chief and the responses you are likely to provide in cross examination. This may impact on your credibility and reliability in the eyes of the panel.

Mr Hayward submitted that to ask parties to look at the transcript of evidence and agree on a version that was your evidence would be time consuming and highly unusual.

Mr Hayward submitted that another approach would be to strike out your evidence entirely including your statement and exhibits. He submitted that that the panel, in light of this, could form the view that the manner with which you provided evidence was unacceptable and proceed with the hearing without providing you with a further opportunity to give evidence. He submitted that this may raise questions in relation to fairness to you.

Mr Hayward submitted that another option was that you restart your evidence. However, the panel would have to be confident that the same issues would not arise again. He submitted that there were not enough grounds to say it would not happen again. He also submitted that the panel could forbid Mr Wylie from being your representative, adopting the panel's powers of case management. He submitted however that this could raise questions in relation to fairness and the periods where Mr Wylie was your representative may be subject to challenge. He submitted that this could potentially lead to the hearing having to be restarted and all the witnesses having to be re-called.

Mr Hayward submitted that the least disruptive and fair way to proceed was to continue with the cross examination.

Mr Wylie submitted that when he started to read your statement, he was stopped and told he could not do this as he was unable to be to be a witness in this case as he was representing you. Therefore, it was handed to the Hearings Coordinator who made copies for the panel.

Mr Wylie submitted that the panel kept copies of this statement until you read it and other witnesses were called. He submitted that he was at a loss to know why he was not allowed to read the statement and why it was now not accepted for you to read it when the panel knew what the content of the statement was.

The panel accepted the advice of the legal assessor.

The panel bore in mind that it had already explained to Mr Wylie that as your representative, he was not permitted to give evidence. It reminded the panel that this was explained to Mr Wylie at the outset of this hearing and during your evidence in chief.

The panel took account of the suggested approaches of Mr Hayward in relation to how to proceed.

The panel determined that the best approach would be to proceed with the cross examination and keep the statements and exhibits contained within your statement. It was of the view that any potential contradictions could be dealt with in closing submissions by Mr Hayward and Mr Wylie and the panel could apply what weight it deemed appropriate in relation to your evidence.

The panel accepted the assurances that the panel would be assisted regarding any potential contradictions. It was of the view that the other options pointed out by Mr Hayward could be too disruptive and onerous with this uncertainty potentially depriving all parties of a fair hearing. It was of the view that to restart the hearing from your evidence would be unfair to all parties involved.

Decision and reasons on application to admit Circular HSC ECCU 1/2010, Circular ECCU 3/2006, Circular HPSSR(3)/93 and Circular ECCU/2/2002

The panel heard an application made by Mr Hayward under Rule 31 to allow Circular HSC ECCU 1/2010, Circular ECCU 3/2006, Circular HPSSR(3)/93 and Circular ECCU/2/2002 into evidence.

With regards to Circular HSC ECCU 1/2010, Mr Hayward informed the panel that this was a circular by the Department of Health dated 11 March 2010 and was entitled Care Management, Provision of Services and Charging Guidance. He submitted that the reason he wanted it admitted into evidence was because it was referred to on a number of occasions by you in your evidence-in-chief. He drew the panel's attention to the following within Circular HSC ECCU 1/2010 which stated:

> *"Care management began in 2002 and it was the responsibility of the care manager to assess their clients under the HSE ECCU 1/2010."*

Mr Hayward submitted that, in due course, he would make submissions that Circular HSC ECCU 1/2010 does not state what it says it does according to how it was presented by you in your evidence.

Mr Hayward informed the panel that Circular HSC ECCU 1/2010 replaced Circular ECCU 3/2006 and wanted to introduce this into evidence. He submitted that the charges in respect of Resident T, U and V go back a number of years before 2010. He submitted that the material covered in the 2010 circular would have been covered in the 2006 circular from that point onwards.

Mr Hayward informed the panel that Circular ECCU 3/2006 superseded an earlier circular entitled Circular HPSSR(3)/93 which would have been dated from 1993. He submitted that he wanted to introduce this circular because it starts before the charges in respect of Resident T, U and V. He submitted that these three circulars together cover the entire period of the charges.

Mr Hayward submitted that it was important for the panel to read Circular HPSSR(3)/93 along with the other two so that there could be no doubt as to what the official guidance was at any point in time within the charges.

With regards to Circular ECCU/2/2002, Mr Hayward reminded the panel that Mr 5 referred to this in his oral evidence. he submitted that Mr 5 had stated that it was relevant and governed various aspects of the processes that were relevant to how charges were calculated in respect to residents.

Mr Hayward reminded the panel that he had asked Mr 5 if he had a copy of Circular ECCU/2/2002 and he did not. He submitted that this circular was not produced by Mr Wylie who called Mr 5 at the time. He also submitted that the NMC was unable to identify it or locate it at that time but have been able to do so since.

Mr Hayward submitted that he wanted to admit Circular ECCU/2/2002 as rebuttal evidence, not in relation to anything Mr 5 said. He submitted that this would be unfair as he was no longer subject to cross-examination.

Mr Hayward submitted that Circular ECCU/2/2002 would be highly relevant to rebut some of your evidence given in cross examination specifically in relation to your

statement pertaining to Resident T, U and V. He submitted that the next questions in his cross examination would challenge that statement.

Mr Hayward submitted that as these four circulars have been referred to by you, your representative and your witnesses, they should have been introduced by you as part of your case.

Mr Hayward submitted that these circulars were relevant and it would be fair to introduce them as they arose out of your case, not the NMC's.

The hearing adjourned on 18 November 2022 to give Mr Wylie time to read the circulars provided and prepare any submissions in response application.

The hearing resumed on 5 June 2023.

Mr Wylie confirmed that he had read the four circulars and opposed the application. He submitted that he no longer had access to Mr 5 to assist with the documents. He submitted that the documents were not something he has seen before. He also submitted that he did not have access to legal representation to advise him.

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

The panel was of the view that it would be fair and relevant to admit the four circulars into evidence. It bore in mind that they were raised by yourself and your witnesses. Further, admitting them into evidence would allow the panel to understand the entirety of your evidence. It would also allow the NMC the opportunity to rebut and challenge what has been put forward by you in cross examination. The panel also accepted that they were relevant to some of the charges.

Decision and reasons to adjourn [PRIVATE]

The panel had decided to adjourn the hearing until Wednesday 7 June 2023.
[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE] It was of the view that the hearing would continue but it would not compel you to continue giving evidence. It would leave this decision to you.

The legal assessor gave legal advice pertaining to the risks of you not giving evidence.

The panel said that you had to decide if you wanted to continue with being cross examined by Mr Hayward or make the choice not to.

You said that you would like the opportunity to discuss it with Mr Wylie.

When you returned, you stated that your “concentration was gone” and that it would be pointless for Mr Hayward to continue with his cross-examination. [PRIVATE]. You said your concentration would not allow you to continue and would have to continually respond to Mr Hayward’s questions with “I cannot remember”.

The chair asked you if your discussion with Mr Wylie took into account the legal advice from the legal assessor regarding the risk of not giving evidence. You said that you understood [PRIVATE].

Mr Hayward submitted that it would be useful to make clear for the record that if you were not submitting yourself to cross examination, then it was not because you have

been excused by the panel. [PRIVATE], he wanted a distinction made that you had decided that you would not co-operate with the proceedings.

The panel determined that it was going to continue with the hearing. Mrs Wylie, however, had not been excused but decided that she was not going to give any further evidence. The panel noted that it had no power to compel you to give evidence and submit yourself to cross-examination.

The panel understood that you had concluded that you would not be able to take any further questions, including from the panel.

Mrs Wylie absented herself from the proceedings and did not attend the hearing any further. The panel proceeded with Mr Wylie's representation of Mrs Wylie, without her being present.

Decision and reasons for adjournment

[PRIVATE]

Mr Hayward submitted that he would like to finish his closing submissions pertaining to charges 14 and 15 and then rebut Mrs Wylie's evidence in relation to her witnesses. He submitted, however, that he would be doing the NMC an injustice if he attempted to do that today. He invited the panel to grant his application to adjourn for the rest of today [PRIVATE] and finish his submissions on facts.

Mr Hayward submitted that this adjournment would provide Mr Wylie with the afternoon to continue with his preparation of his response in relation to the charges.

Mr Wylie did not oppose the application.

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

The panel decided to grant the application. It determined that such a modest adjournment would be appropriate in these circumstances. It was also of the view that an adjournment would afford Mr Wylie time to finalise his response as Mr Hayward would conclude his closing submissions on the charges today and deal with other evidential matters tomorrow morning.

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Hayward to amend the wording of Schedule G pertaining to charge 14.

Mr Hayward reminded the panel that the height of the evidence for the NMC was that the amounts the residents were charged was the amount deducted from their cashbooks. He submitted that the amount of money, in respect of:

- the trip to Portballintrae was £300 for 11 Residents
- to Newcastle was £300 for nine residents and £400 for two residents.

In respect of the Carlow trip there were two deductions totalling £446 for one resident.

Mr Hayward submitted that a question arose, why the residents have been charged these amounts and on what basis. He submitted that this was not something Mrs Wylie has been able to answer. He submitted that she had been unable to explain the basis on which the charges were made or how the deductions from the residents cashbooks were arrived at.

Mr Hayward submitted that there was nothing in evidence to show that the costing exercise undertaken by Mrs Wylie occurred before or around the time the actual holidays had taken place. He submitted that all the costings that the NMC have been provided with had been constructed after the holidays had occurred and in the context of the Trust investigations. He submitted that no costing exercise appeared to have been conducted at the time the holidays were being planned.

Mr Hayward submitted that Mrs Wylie was unable to cite a specific internal policy which dealt with the costs of holidays.

Mr Hayward submitted that this was the reason for adding the column titled “Charge to resident (as deducted from cashbook)”. He submitted that this was to make it clear within the schedule that this was the NMC’s case as deduced from Mr 3’s evidence. Mr Hayward also submitted that this further clarified his submissions.

Mr Hayward submitted that Mrs Wylie was unable to provide any justification to the assertion that holidays had to be subsidised. He submitted that this was done retrospectively and whilst under scrutiny.

Mr Hayward submitted that Mrs Wylie could only arrive at a justification for the cost of holidays by engaging in a retrospective costing exercise.

Mr 3 in evidence said that these were inappropriate costings especially in respect of staffing costs. The other figures that appeared in schedule G demonstrated the inappropriateness of the costing exercise undertaken by Mrs Wylie in order to justify the initial unjustified cost to the residents.

Mr Hayward submitted that this was why the proposed amendment in the penultimate column removes the word “charged” and replaced it with the word “cost”. He submitted that the NMC does not say the residents were charged these amounts.

Mr Hayward submitted that even if this was an appropriate way of conducting business, which the NMC says it was not, the way the figures in the penultimate column have been arrived at were subject to challenge due to the inappropriate way of calculating staffing costs in particular. He submitted that the last column should be removed from the schedule to make clear that the NMC relies on the cashbook deductions.

Mr Hayward submitted the amendments more accurately reflect the NMC’s submissions in respect of holiday costs that emerge from Mr 3’s evidence.

Proposed Amendment

SCHEDULE G

Date	**Destination**	**Charge to resident (as deducted from cashbook)**	**Hotel Charge**	**No. Residents**	**Total charged for accommodation per resident**	**Total charged for staff supervision per resident**	**Charge for transport per resident**	**Total cost ~~Charge~~ per resident**	**~~Overcharge per resident~~**
15 to 17 May 2012	Portballintrae	**£300**	£145 per person, including two dinners, two breakfasts and a lunch	16 – I, P, L, Z, K, O, E, J, R, Y, X, F, W, T, AA, U	£203.75	£232.57	£207.60	£643.92	~~£225.88~~
23 to 25 April 2012	Newcastle	**£300 (9 residents)** **£400 (2 residents, incl. G)**	£110.90	11 – H, D, AH, Q, L, S, N, M, AC, B, AB	£110.90	£154.54	£100.00	£365.44	~~£131.63~~

18 to 19 June 2011	Carlow (Ireland)	**£446**	£62.61	1 - L	£290.28 (including meals for staff as well)	£337.50	£232.20	£859.98	~~£178.77 (only including transport and staff meals)~~

The panel heard submissions from Mr Wylie who submitted that he did not understand why after all this time there was an application to amend Schedule G.

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).

The panel decided that such an amendment, as applied for, was in the interest of fairness. The panel was satisfied that there would be no prejudice to Mrs Wylie and no injustice would be caused to either party by the proposed amendment being allowed. It was of the view no new source documents have been referred to and the material has not changed. Rather it has just been presented in a way that provides more clarity. It was therefore appropriate to allow the amendment, as applied for, as it just simplifies the data.

Decision and reasons for proceeding in the absence of Mr Wylie for the limited purpose of handing down its decision to amend schedule G of charge 14

[PRIVATE]

Decision and reasons for adjournment

[PRIVATE

Decision and reasons for proceeding in Mr Wylie's absence for the limited purpose of dealing with disclosure and an aspect of Mr Wylie's written closing submissions

[PRIVATE]

Decision and reasons of disclosure

Mr Hayward referred the panel to the closing written submissions of Mr Wylie who expressed discontent at the panel not ordering disclosure for a number of documents he listed. He submitted that the panel should remind itself of its previous decision for disclosure and raise any issues it had with the NMC.

Mr Hayward submitted that a "trigger point" has been reached pertaining to the statement given by Ms 4 to the police. He referred the panel to the written submissions of Mr Wylie which stated:

> *"[Ms 10] claimed in transcript that [Ms 4], social worker responsible for placement of three mental health patients from hospital had nothing to do with their finances. This is totally untrue if it is [Ms 4] she is referring to, and it is very disappointing that the panel refused Mr Wylie's request to order disclosure of [Ms 4]'s statement to the police regarding this matter so that the true facts could have been revealed. [Mr 3] said that he wasn't able to confirm whether [Ms 4] knew or not. It appears very strange that both NMC witness give different versions of what [Ms 4] said or didn't say."*

Mr Hayward submitted that the context relates to the placement of Resident T, U and V in Hebron house in 1990, and the financial arrangements in respect of that placement. He submitted that Mrs Wylie, in her written statement suggested that Ms 4 agreed to fees that form the subject matter of charges 3, 4 and 5. Mr Hayward submitted that in his closing statements, that it appeared from Ms 10's evidence that the trust had contacted Ms 4 and had satisfied themselves that she had not made any representations as to those financial statements.

Mr Hayward submitted that he thought Mr Wylie's case was that there was a conflict of evidence in relation to what Ms 4 did or did not say. Additionally, there might be a statement she made to the police during the investigation and the panel have not ordered disclosure in respect of this.

Mr Hayward referred to Mr Wylie's original submissions regarding his application on disclosure where he stated:

> *"I require PSNI witness statement from Ms 4, social worker, who was involved with resident U discharge from St Luke's hospital to a residential home."*

Mr Hayward submitted that Mr Wylie also requested more PSNI statements but they all related to residents using challenging behaviour. Mr Hayward reminded the panel that his submissions at the time were that a resident's use of challenging behaviour was not relevant for the purpose of these proceedings. Mr Hayward also reminded the panel that it had accepted his submissions in relation to the PSNI statements and determined that they were not relevant.

Mr Hayward reminded the panel that, at the time, Mr Wylie did not explain that he wanted Ms 4's police statement in relation to the financial arrangements. He submitted that Mr Wylie, now in his written closing submissions, explains the relevance of the police statement. It was for this reason that the NMC say that a "trigger point" for the panel to review its decision on disclosure has been reached. He invited the panel to look at what was said about this specific statement and what was said about it and consider whether there was now an obligation for that statement to be obtained.

Mr Hayward submitted that there was no such obligation. He reminded the panel of the legal test in the case of *R (Johnson and Maggs) v Professional Conduct Committee of the Nursing and Midwifery Council [2008] EWHC 885 (Admin).* He reminded the panel that the first test was relevance and the second test was that Mrs Wylie would have to demonstrate there was a real inequality of arms if the documents were not obtained on her behalf. Mr Hayward submitted that both tests must be met.

With regards to the inequality of arms, Mr Hayward reminded the panel would have to be satisfied that Mrs Wylie or her representatives were unable to obtain that statement for themselves and that the NMC would need to obtain the evidence on her behalf if she was unable to do so. Mr Hayward reminded the panel that Mrs Wylie's then solicitors made a request for the PSNI statements and received no response.

Mr Hayward reminded the panel that after its decision on disclosure, Arthur Cox sent a pre action protocol letter prior to a proposed judicial review. He submitted that attached to this letter was correspondence between Arthur Cox and the PSNI that contained the PSNI's response. He submitted that this was the first time that the NMC had seen that response. He informed the panel that the letter stated that the PSNI would not provide Mrs Wylie with any information because, unlike the NMC, Mrs Wylie and her representative had not identified a statutory obligation on the police to provide her with that information.

Mr Hayward submitted that it could now be said that Mrs Wylie was unable to obtain that statement herself. He submitted that the position did not change then because the added information that we had now about the purported relevance of that PSNI statement did not exist then.

Mr Hayward submitted that before the panel could find that there was an inequality of arms, Mrs Wylie would have to demonstrate that she was unable to call Ms 4 herself personally to give evidence. Mr Hayward submitted that Ms 4 could be asked about what she said to the police, and more importantly, she could be asked what happened in 1990. Mr Hayward submitted that Mrs Wylie had not provided reasons as to why she had not contacted Ms 4 and it was on this basis that the NMC'S position was that there cannot be an inequality or arms.

Mr Hayward submitted that even if Mr or Mrs Wylie could demonstrate that there were good reasons that Ms 4 could not come and give evidence, the NMC's position was that the PSNI statement was not relevant. He submitted that this was because regardless of what the financial arrangements were in 1990, they have been overridden as a matter of law and as a matter of contract in 2002.

Mr Hayward submitted that there was no obligation to obtain Ms 4's police statement because Mr Wylie was unable to satisfy the panel that the statement was actually relevant. He further submitted that Mr Wylie has not made any effort to call Ms 4 or

explain why he has not done so. Mr Hayward submitted that Mr Wylie has not been able to say that there has been an inequality of arms.

Mr Hayward invited the panel to look at the matter of disclosure again and was also inviting the panel not to change its position.

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

The panel determined that it had not been presented with anything that undermined its original decision in relation to disclosure. However, it noted that Mrs Wylie would have an opportunity to respond to this decision and concluded that it would adjourn the hearing.

Decision and reasons on hearing management

[PRIVATE]

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Wylie was not in attendance and that the Notice of Hearing letter had been sent to her registered address by recorded delivery and by first class post on 24 October 2023.

The panel had regard to the Royal Mail 'Track and trace' printout which showed the Notice of Hearing was delivered to Mrs Wylie's registered address on 25 October 2023. It was signed for against the printed name of 'DUNN'.

Mr Hayward submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

The panel took into account that the Notice of Hearing provided details of the allegation, the time, dates and venue of the hearing and, amongst other things, information about Mrs Wylie's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Mrs Wylie has been served with the Notice of Hearing in accordance with the requirements of Rules 11 and 34.

Decision and reasons on proceeding in the absence of Mrs Wylie

The panel next considered whether it should proceed in the absence of Mrs Wylie. It had regard to Rule 21 and heard the submissions of Mr Hayward. He drew the panel's attention to two emails from Mrs Wylie's email address dated 6 August 2023 and 3 November 2023 respectively. He submitted that both emails indicated that neither Mrs Wylie nor her representative Mr Wylie intended on attending the hearing.

Mr Hayward submitted that it was clear that Mrs Wylie did not intend to proceed and expected the panel to proceed in her absence. He invited the panel to proceed in the absence of Mrs Wylie.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 was not absolute and was one that should be exercised *'with the utmost care and caution'*.

The panel had decided to proceed in the absence of Mrs Wylie. In reaching this decision, the panel has considered the submissions of Mr Hayward, the representations from Mr 24 on Mrs Wylie's behalf, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Wylie or Mrs Wylie;
- Mrs Wylie has informed the NMC that she has received the Notice of Hearing and confirmed she is content for the hearing to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- There is a strong public interest in the expeditious disposal of the case.

In these circumstances, the panel had decided that it was fair to proceed in the absence of Mrs Wylie. The panel would draw no adverse inference from her absence in its findings of fact.

The issue of Fairness by the NMC in Mr Wylie submissions

Mr Hayward referred the panel to Mr Wylie's written closing submissions which stated:

> *"NMC case presenter has repeatedly stated that Mr and Mrs Wylie chose not to cross examine NMC witness. This is untrue and unreasonable as Mr and Mrs Wylie were subjected to being in a waiting room in Forsythe House with cold air blowing down on them with no where to switch it of. The next day they were subjected to the same degrading conditions with no heat, in mid winter. [PRIVATE]*
>
> *Mr and Mrs Wylie did not choose to not cross examine NMC witnesses [PRIVATE] Mr Wylie had spent months in preparing his questions. NMC case presenter even suggested to the panel that he thought Mr Wylie had a substantial bundle prepared.*
>
> *If the NMC case presenter was unable to attend, proceedings were always adjourned.*

[PRIVATE]."

Mr Hayward submitted that Mr Wylie's submissions that he and Mrs Wylie were deprived of an opportunity to cross-examine NMC witnesses are incorrect. He submitted that Mr Wylie's point was a "very serious attack on the fairness of the proceedings". He submitted that if Mr Wylie was right and the opportunity to cross examine NMC witnesses had been unfairly deprived, then that would cast a serious doubt over the fairness and validity of these NMC proceedings as a whole.

Mr Hayward reminded the panel that Mr and Mrs Wylie were absent in August 2021 and December 2021. He drew the panel's attention to the Notice of Hearing, dated 24 June 2021, informing Mrs Wylie which stated:

> *"You have the right to come to the hearing and we recommend you do. If you don't engage with the hearing process or with our fitness to practise process in general, the Panel can proceed with the hearing in your absence. This means you will not have the opportunity to address the Panel on any findings that are made. The Panel will decide on your fitness to practise and whether a sanction is required without further statements from you"*

Mr Hayward submitted that the Notice of Hearing made it clear that there was a possibility that the panel would continue in her absence if she did not attend and there could be adverse consequences if that happened.

Mr Hayward continued with the Notice of Hearing, under the heading "If you cannot come to the hearing" which stated:

> *"The hearing can still go ahead without you, but you have the right to ask us to postpone it. You'll need to give evidence to show why you can't go on the specific date that's scheduled for. If you can't go because you're ill, you'll need to show us a medical certificate…'If you have a disability'. 'Let us know if you have any disability or injury that would make it difficult for you to get to the hearing or fully take part in it. We'll do everything we can to help'.*

Mr Hayward submitted that there was a specific step as part of the notification of the hearing that invited Mrs Wylie to keep the NMC up to date with her contact information specifically because the NMC might need to contact her at short notice with important information about the hearing. He submitted that Mrs Wylie never returned this information to the NMC and further submitted that there had never been a response from Mrs Wylie to the Notice of Hearing.

Mr Hayward submitted that the onus was on Mrs Wylie to keep the NMC up to date and she had not done this.

Mr Hayward reminded the panel that on Friday 30 July 2021, it had handed down a decision on disclosure. He submitted that Mr Wylie stated that he wanted a copy of the transcript forwarded to him and confirmed that he would not be in attendance on Monday 2 August 2021 as he would need to confer with his solicitor. He submitted that the panel made it clear that it would reconvene at 09:30 on 2 August 2021 and would make a decision as to whether the hearing continued, or it was adjourned.

Mr Hayward drew the panel's attention to an email from Mr and Mrs Wylie's solicitor Mr Black, dated 30 July 2021. This email stated that Mr Black was only representing Mrs Wylie to review the disclosure decision and requested until close of business on Tuesday 3 August 2021 to do this. Mr Hayward submitted that this was an application for an adjournment until Wednesday 4 August 2021.

Mr Hayward reminded the panel that on 2 August 2021, it had agreed to a short adjournment until 3 August 2021. This was to allow Mr and Mrs Wylie to attend and make a properly argued adjournment application. He submitted that this was important as it demonstrated that the NMC did not adopt the approach that it proceeded regardless and nor did the panel. He submitted that it was clear a cautious approach should be taken.

Mr Hayward drew the panel's attention to an email dated 2 August 2021 from the Hearings Coordinator, on behalf of the panel, attaching the panel's decision and

directing that Mrs Wylie and her representative attend on 2 August 2021 with detailed submissions regarding why she needed more time.

Mr Hayward drew the panel's attention to the response from Mrs Wylie's legal representative, dated 3 August 2021, stating that Mrs Wylie was seeking legal advice regarding the panel's decision. Mr Black stated that since the decision was only sent the day before, they wanted until close of business on Wednesday 4 August 2021. Mr Hayward submitted that there was an adjournment until Thursday 5 August 2021.

Mr Hayward then drew the panel's attention to an email from Mr Wylie, dated 3 August 2021, sent to the NMC Case officer, stating that he and Mrs Wylie [PRIVATE]. Mr Hayward submitted that the Hearings Coordinator sent Mr Wylie a link to join the hearing virtually and given until 11:30 to tell the panel how he wanted to proceed. He further submitted that the Hearings Coordinator tried to call Mr Wylie and received no response.

Mr Hayward submitted that Mr Wylie responded in an email to state that he could not join the hearing virtually and reiterated that the panel were asked to adjourn until Thursday so legal advice could be attained.

Mr Hayward reminded the panel that at this time, it had made clear directions to Mr and Mrs Wylie and Mr Black that they were to attend on 2 August 2021 with written submissions as to why they need more time and renew their adjournment application. Mr Hayward reminded the panel of his submissions at the time, namely that the direction of the panel was ignored, and Mrs Wylie voluntarily absented herself. Mr Hayward reminded the panel that he applied for the panel to proceed in the absence of Mrs Wylie.

Mr Hayward reminded the panel of its decision which was to proceed in Mrs Wylie's absence so it could hand down its decision and give Mr and Mrs Wylie an opportunity to attend on Wednesday 4 August 2021 to hear live evidence.

Mr Hayward drew the panel's attention to a letter received from Mr Black dated 4 August 2021 which was a pre action protocol letter written with a view to judicially reviewing the NMC. The letter asked for an adjournment due to Mr and Mrs Wylie [PRIVATE], not being comfortable appearing remotely, not being advised by the NMC or the panel as to which of the NMC witnesses would be called and undermining their ability to prepare and therefore not being in a position to proceed with witnesses.

Mr Hayward, at the time, reminded the panel that a case conference identified which witnesses the NMC intended to call and that all four were being called within the present two-week period. He reminded the panel that it saw the minutes of that case conference.

Mr Hayward reminded the panel that it decided to proceed in the absence of Mr and Mrs Wylie and this decision was sent to them and Mr Black. He submitted that it was clear that Mrs Wylie was given a number of opportunities to attend in order specifically to make a fulsome adjournment application with reasons. He submitted that the panel's directions were for Mrs Wylie to attend to make a proper adjournment application which was never engaged with.

The panel bore in mind that it proceeded in Mrs Wylie's absence only until Mr Hayward had completed his evidence in chief with Mr 3 to provide the opportunity for cross-examination should Mr and Mrs Wylie return to the hearing.

Mr Hayward reminded the panel that the hearing resumed on 6 December 2021 and was scheduled to end on 17 December 2021. He submitted that on 6 December 2021 Mr Wylie cross-examined Mr 3 and produced a document that had not been evidenced. This was done numerous times and effectively an application had to be made to admit this evidence.

The panel bore in mind that Mr Wylie made his rule 31 application. Before the panel handed down its decision Mr Hayward informed the panel that Mr 3 was only available to give evidence from 6 to 8 December 2021. Therefore, Mr Wylie would not be able to

continue with his cross examination of Mr 3 and it was suggested that the panel hear evidence from the next witness.

Mr Wylie opposed this. However, the panel decided to proceed with the next witness. Mr Hayward reminded the panel that Mr Wylie was not happy with this decision. He submitted that the hearing was due to resume on Friday 10 December 2021 and this was where Mr and Mrs Wylie informed the NMC Case Officer that [PRIVATE].

Mr Hayward submitted that Mr and Mrs Wylie did not attend the hearing on Friday 10 December 2021 nor did they attend on Monday 13 December 2021. He also submitted the NMC did not apply to proceed in their absence. He submitted that Mr and Mrs Wylie were provided with further opportunities to provide what was needed and the application to proceed in their absence was not made until the Tuesday.

[PRIVATE]

[PRIVATE]. He submitted that it was made quite clear that the panel may proceed in her absence if the relevant evidence was not provided. He submitted that Mrs Wylie would have known that because that was what the panel had done in August 2021. He submitted that Mrs Wylie could be in no doubt over what the panel might do if she failed to engage with the process. [PRIVATE].

Mr Hayward submitted that this was when the panel decided to proceed in Mrs Wylie's absence for the second time in December 2021. He submitted that it was at this point that he called Mr 16 and Ms 10 to give evidence and neither were cross examined because at that stage Mrs Wylie was not present.

Mr Hayward referred the panel back to Mr Wylie's written submissions. Mr Hayward submitted that Mr Wylie appears to take particular offence at the fact that his cross examination of Mr 3 had not been completed and that because Mr 3 was then called in December 2021, when Mr and Mrs Wylie were not present.

Mr Hayward reminded the panel that he asked the NMC if there was a possibility of Mr 3 attending remotely “given the present circumstances”. He submitted that when he said this, his initial forecast for what could have been done in that two-week December 2021 period was on the assumption that Mr and Mrs Wylie would have been present to cross examine witnesses. He submitted that because they were absent and failed to engage with the panel’s requirements, the hearing proceeded without delay. He submitted that it was after he had finished earlier than anticipated, he then explored whether Mr 21 and Mr 3 were available.

Mr Hayward submitted that his submissions were to counter any suggestion by Mr Wylie that there has been any unfairness whatsoever in the proceedings. He invited the panel not to accept Mr Wylie’s suggestion that there has been any unfairness in the proceedings by Mr Wylie, on Mrs Wylie’s behalf, not being able to cross examine NMC witnesses.

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

The panel considered the submissions of Mr Hayward and the submissions made on Mrs Wylie’s behalf. The panel considered that the process it followed was fair. It noted that it had given Mrs Wylie every opportunity, including delaying the hearing on several occasions, to provide the panel with evidence [PRIVATE]. The panel had made it clear that if this information was not forthcoming, then it could consider proceeding in Mrs Wylie’s absence.

[PRIVATE].

Subsequently, Mr and Mrs Wylie both disengaged from the process [PRIVATE].

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 Hayward on behalf of the NMC and by Mr Wylie on your behalf.

The panel has drawn no adverse inference from the periods that Mrs Wylie was not in attendance during this hearing.

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:

- Mr 3: At the relevant time, a Specialist Forensic Practitioner at the Trust and part of the investigation team that looked into the alleged financial abuses;
- Mr 16 Employed by the RQIA as a finance inspector and conducted a number of inspections.
- Mr 21 At the relevant time, Care Manager for Mental Health Services within the Trust;
- Ms 10 At the time, Head of Service for Adult Safeguarding by the Trust. Now retired.

The panel heard oral evidence from six other witness on your behalf:

- Ms 22 — From June 2011, worked as the Residents' Accounts Manager at Hebron House and Bawn Cottage;
- Mr 6 — In 2010, worked part time at Hebron House and Bawn Cottage and had responsibility for governance;
- Mr 8 — Husband to a Resident at Bawn Cottage;
- Mr 5 — From 2005 to 2010 employed by RQIA. Appointed as a consultant by Arthur Cox in 2012 to assist with your case;
- Mr 23 — Church Minister at Elim Pentecostal Church;
- Mr 24 — Your son.

The panel also heard evidence from you under oath.

The panel noted Mrs Wylie's evidence in chief had not been completed. She was able to put forward her defence to the charges. However, in the early stages of cross examination Mrs Wylie stated that she was struggling to remember anything and was unable to continue [PRIVATE]. [PRIVATE], Mrs Wylie decided to withdraw from giving further evidence. This meant Mr Haywood could not test her evidence and the panel could not ask any questions of her.

The panel in carefully balancing the evidence available to it has given Mrs Wylie's evidence what weight it deemed appropriate.

The panel observed that Mr Hayward outlined the relevant legislative provisions governing the role of 'Registered Manager' and 'Registered Persons' in care homes in Northern Ireland as produced below:

"KEY LEGAL PROVISIONS

The regulatory framework

5. The Residential Care Homes Regulations (Northern Ireland) 2005 ('the 2005 Regulations') constitute the regulatory framework within which Mrs Wylie operated, and it is therefore appropriate to set them out first, as they provide the backdrop to a number of the charges.

6. These Regulations came into force on 1 April 2005. Of particular note for present purposes are the following provisions, set out in numerical order:

6.1. Regulation 2(1) provides a list of definitions, of which the following three are key. Importantly, references within the Regulations to the registered person point to the registered manager as well as the registered provider.
6.1.1. "'registered manager' in relation to a residential care home, means a person who is registered under Part III of the Order as the manager of the residential care home;"

6.1.2. "'registered person' in relation to a residential care home, means any person who is the registered provider or registered manager in respect of the residential care home;"

6.1.3. "'registered provider' in relation to a residential care home, means a person who is registered under Part III of the Order as a person carrying on the residential care home".

6.2. Regulation 4(1)(c): "The registered person shall produce a written guide to the residential care home which shall included – […] a standard form of contract for the provision of services and facilities by the registered provider to residents".

6.3. Regulation 5(3) states: "Where a HSS Trust has made arrangements for the provision of resident accommodation with board and personal care at the residential care home and the charge made exceeds the fee paid, the registered person shall in the individual written agreement –
(a) record the reason for the additional charge;
(b) by whom it will be paid; and
(c) list the services, if any, provided for it."

6.4. Regulation 15(2) provides: "The registered person shall ensure that the assessment of the resident's needs is –
(a) kept under review; and
(b) revised at any time when it is necessary to do so having regard to any change of circumstances and in any case not less than annually."

6.5. Regulation 19 imposes an obligation on the registered person to keep and maintain within the home certain records, which are set out in Schedules 3 and 4. The following records are particularly apposite in the present context:
6.5.1. sch 4, para 8: "A record of the home's charges to residents, including any separate amounts payable for additional services not covered by those charges, and the amounts paid by or in respect of each resident."

6.5.2. sch 4, para 17: "A record of charges made to residents for transport and the amounts paid by or in respect of each resident".

6.6. Regulation 22(1) states: "Subject to paragraph (2), the registered person shall not pay money belonging to any resident into a bank account unless –
(a) the account is in the name of the resident to which the money belongs; and
(b) the account is not used by the registered person in connection with the carrying on or management of the residential care home."

6.7. Regulation 28(1) puts on obligation on the registered provider to ensure that the home is financially viable, but Regulation 28(2) places an obligation on the

registered person (i.e., not just the registered provider) to make certain information and documents available to the RQIA when asked.

6.8. Finally, Regulation 37 explains what constitutes compliance where (as here) there is more than one registered person: "Where there is more than on registered person in respect of a home, anything which is required under these regulations to be done by the registered person shall, if done by one of the registered persons, not be required to be done by any of the other registered persons."

Importantly, this provision does not state that the duties placed on the registered person can be deputised or allocated to a specific person, freeing the other(s) from having to comply with the Regulations. Rather, its purpose is to avoid duplication. It is only where one registered person is in compliance that the other(s) are relieved of their duties; thus, if something that is required by the Regulations has not been done, then all registered persons remain under an obligation to comply.

6.9. The 2005 Regulations came into force on 1 April 2005. Prior to then, the regulatory regime was contained in the Residential Care Homes Regulations (Northern Ireland) 1993 (as amended; 'the 1993 Regulations').

6.10. The 1993 Regulations had a much lighter touch, but certain provisions are still worth highlighting. First, rather than a tripartite definition for 'registered person', 'registered manager' and 'registered provider', Regulation 1(2) simply defined "person registered" as meaning "any person registered in respect of the home". Second, Regulation 5 imposed an obligation on the person registered to compile and keep within the home certain records, including: "A record of the scale of charges from time to time applicable including any extras for additional services not covered by that scale and of the amounts paid by or in respect of each resident" (sch 4, para 12). Finally, Regulation 21 provided a similar compliance provision as Regulation 37 of the 2005 Regulations."

In considering the charges, the panel determined that, in line with the legal provisions Mrs Wylie was the “Registered Manager” and “Registered Person”.

In this determination reference is made to Mr and Mrs Wylie throughout. However, Mrs Wylie is the registered nurse facing the charges. Both names are only used to provide context where applicable.

The panel noted that when Mrs Wylie was providing care and other services to the residents at the homes, she was doing so in the capacity as the Registered Manager and the Registered person. Additionally, it determined that Mr Wylie was both the Registered Provider and the Registered Person for both homes.

The panel took account of ‘the 2005 Regulations’, particularly “PART V MANAGEMENT” and Section 28 entitled 'Financial Position’. In light of this, the panel determined that Mrs Wylie could not claim that she had no responsibility for the financial management of both homes. As the Registered Manager and Registered Person of both homes, she was in a position to delegate, but not to rid herself of her financial responsibilities. However, she remained statutorily responsible for finance. The panel therefore determined that Mrs Wylie, the Registered Manager and Registered Person, had responsibility for financial matters relating to both homes.

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

Charge 1

1. On various dates between January 2005 and December 2011, failed to meet the costs of meals at day care centres for one or more residents, up to the values as set out in Schedule A.

Schedule A

Residents	**Amount Paid from January 2005 to December 2011**

Resident A	£518.60
Resident B	£1506.90
Resident C	£1858.20
Resident D	£1899.55
Resident E	£252.90
Resident F	£459.45
Resident G	£2.65
Resident H	£239.30
Resident I	£6.20
Resident J	£7.85
Resident K	£4.50
Resident L	£17.90
Resident M	£349.30
Resident N	£51.05
Resident O	£753.90
Resident P	£22.00
Resident Q	£1600.80
	Total: £9551.05

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 3, Ms 22 and Mrs Wylie's evidence. Mr 3 gave a comprehensive overview of the investigation he conducted and tried to assist the panel throughout. The panel found his evidence compelling, and he had a thorough understanding of the issues giving rise to the charges.

Mr 3 in his witness statement stated:

> *"On 01 February 2010, Resident B's sister brought to the attention of the Trust concerns regarding Resident B's personal allowance at the Home. Resident B's sister identified that Resident B was being charged for day care meals at Appleby Social Education Centre, Armagh…Resident B's sister was concerned because the contract dated 2009 that Hebron house had with the Trust states section 11, "The Home is ultimately responsible for the provision of resident's meals. Where residents are receiving meals in day care facilities outside the Home, the Home is to meet the cost of these meals" … the previous contract from 2002 to 2009 states in section 8.26 on page eight "Where clients are receiving meals in day*

care facilities outside the Home, the provider is expected to meet the costs of these meals"

Mr 3 reiterated this in his oral evidence.

Mrs Wylie did not deny that the homes charged residents for day care meals for a number of years and that this was down to how the homes interpreted the 2002 contract. Mrs Wylie originally disagreed with the amount of overcharge calculated by the Trust. This was originally estimated at £21,489.60 but was reduced to £10,581.05 following receipt of additional documentation from the Trust. The Trust eventually stated that the actual amount overcharged was £9551.05 and this covered the period January 2005 to December 2011.

Mr 3 in his witness statement stated that these amounts were calculated using receipts from Appleby Day Care centre and documentation from Hebron House and Bawn Cottage. The panel noted that the figure of £9551.05 set out in Schedule A, agreed with the Trust's calculations taken from the receipts. Mrs Wylie disputed this figure and suggested the amount owed was actually £6923.25 and covered the period April 2004 to March 2010. Mrs Wylie had claimed, through her legal representatives, that this amount had been repaid to the Trust on a without prejudice basis.

In considering the facts the panel took account of the 2002 and 2009 Trust/ Provider contracts that governed the provision of day care meals for residents attending day care. The 2002 contract entitled the Provision of Residential / Nursing Home Care Services from 1 August 2002 stated the following in paragraph 8.26.

"The home is ultimately responsible for the provision of clients' meals. Where clients are receiving meals in day care facilities outside the Home, the Provider is expected to meet the cost of the meals"

The 2009 contract entitled "Residential & Nursing Home Specification and Contract" stated the following under the heading "Meals at External Day Care":

"The Home is ultimately responsible for the provision of resident's meals. Where residents are receiving meals in day care facilities outside the Home, the Home is to meet the cost of these meals"

The Panel noted the slight difference in wording between the two contracts. It noted that the word "expected" was not in the 2009 contract whereas it was contained in the 2002 contract. However, the Panel determined that the wording was sufficiently clear in the 2002 contract to conclude that the home had a legal obligation to pay for day care meals and that this was not the responsibility of the resident.

The panel therefore concluded that by charging residents for meals, contrary to the 2002 and 2009 contract with the Trust that Mrs Wylie failed to meet the costs of meals at day care centres (Appleby) for one or more residents, up to the values as set out in Schedule A.

In light of the above, the panel therefore found charge 1 proved.

Charge 2

2. Your actions in Charge 1 were dishonest in that you sought to obtain financial advantage by allowing residents to pay for their own meals at the day care centres.

This charge is found proved.

In reaching its decision, the panel noted that the test for dishonesty is set out in *Ivey* v *Genting Casinos (UK) Ltd t/a Crockfords* [*2017*] *UKSC 67.* The test is as follows. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The Panel must determine whether Mrs Wylie's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. There is no requirement that a registrant must appreciate what they have done is, by those standards, dishonest.

The panel noted that ‘the 2005 Regulations’ were in force from 1 April 2005. They were therefore applicable during the period January 2005 to December 2011 when the alleged day care charges were incurred Mrs Wylie as the Registered Manager and the Registered Person had a legal responsibility for the homes’ finances during this time.

The panel noted that there were two different contracts in place between the Trust and its providers during this time. The 2002 contract stated in paragraph 8.26 that the provider was ‘expected’ to pay for day care meals when they were being received in day care facilities. The 2009 contract was broadly similar in tone and stated that the provider was to meet the costs of day care meals in day care facilities.

The panel determined that Mrs Wylie as the care home manager for both Hebron House and Bawn Cottage would have had knowledge of the provider contracts given her general management responsibility and her daily care management responsibilities at both homes. The contracts were clear that the care provider had a legal responsibility to pay for day care meals and that this was not the responsibility of individual residents. However, Mrs Wylie continued over a period of years to levy a daily charge for meals on Residents attending day care.

Mrs Wylie in her written evidence stated that she was unaware that the home was expected to pay for day care meals taken by some residents. The Homes’ Terms and Conditions clearly stated that residents attending day care would be provided with a packed lunch or if they wished to take lunch provided by day care centres they would have to pay. She also confirmed this during her oral evidence when she stated that residents paid for their meals “out of their own money”.

Following representations to the Trust by the sister of a resident who had been charged for meals in day care the Trust wrote to Mr Wylie in April 2011 requesting that residents be refunded for day care meals. The panel noted that instead of investigating the matter the correspondence was passed to Mr Wylie’s legal adviser with instructions to respond to the Trust. The response to the Trust in April 2011 stated:

"…accordingly our client denies any legal liability for the cost of meals prior to the 1 April 2009. In respect of the period from 1 April 2009 onwards please furnish evidence of the meals actually received and consumed by residents and invoices and other documentary evidence of the claimed costs thereof for consideration by our client and his advisors"

In further correspondence in June 2011 the legal advisors informed the Trust as follows:

"Our client has no proposals whatsoever to substantiate and document its claims in respect of the meals provided prior to the 1 April 2009. It is for the Trust to substantiate and document its claims in respect of the period from the 1 April 2009".

The panel noted that Mrs Wylie's originally disagreed with amount of overcharge calculated by the Trust. This was originally estimated at £21,489.60 but was reduced to £10,581.05 following receipt of additional information from the Trust. The Trust eventually stated that the actual amount overcharged for the period January 2004 to December 2011 was £9551.05.

In correspondence to the RQIA in December 2012 Mr Wylie's legal advisor stated

"Regardless of the previous legal advice our clients are willing to repay, on a without prejudice basis, the cost of meals actually taken by the residents between April 2004 and February 2010. Following a detailed review our client has confirmed the relevant sum to be repaid is £6923.80 and this payment has been made on account pending review by the Trust. The Trust's estimate of the amount due to residents was £21,489.60 which was an overstatement of £14,565.80. On the basis of the above we submit that the allegation of "unjustified and significant overpayment" in relation to daycare is not substantiated"

Mrs Wylie said that she did not realise that the contract in place before 2009 prohibited a home charging for a resident's day care meals. However, the panel noted the content

the 2002 contract entitled “Contract for the Provision of Residential/Nursing Home Care Services from 1 August 2002”. This was the contract in place between Hebron House, Bawn Cottage and the Trust between 2002 and 2009. Under the Heading “Principles of Residential/Nursing Home Care” it stated the following at Paragraph 8.26:

> *“The Provider is ultimately responsible for the provision of client’ meals. Where clients are receiving meals in day care facilities outside the Home, the Provider is expected to meet the cost of these meals.”*

The panel noted Mr Hayward’s submission that:

> *“The effect of Mrs Wylie’s position in respect of the 2002 Contract is that the word “expected” meant that clause 8.26 was not legally enforceable. Leaving aside*
> *whatever arguments might exist at contract law, the effect of adopting that argument in the present disciplinary proceedings is (it [was] submitted) that the statement that the Homes were expected to meet the charges meant that, in fact, the Homes did not need to meet such charges. Such an interpretation is plainly the opposite of what the contract intended to do, and is therefore untenable.”*

Mrs Wylie said that she had received legal advice which supported her position. She produced correspondence from her solicitors asserting that legal advice had been provided which supported this contention. Mrs Wylie never at any time produced the actual legal advice that she claimed had been given. It was open to her to provide the supportive opinion in the same way that it was open to her to provide bank records showing refunds to residents of the sums agreed in refunds. There was no basis therefore on which the panel could find that Mrs Wylie had relied on a definite and clearly framed legal opinion which supported her position and why the alternatives were not supportable. An assertion that the opinion existed, even if repeated, is not evidence that Mrs Wylie in fact relied on such a legal opinion.

The panel noted that the provision begins by imposing liability on the home for the provision of meals to residents. Further, where meals were provided externally at day

care centres, the obligation to provide meals was discharged by the home paying for such meals. There are no supplementary words provided for any alternative such as substituting packed lunches provided by the home. The panel was satisfied that, in this context, the ordinary meaning of “expected” as something that is anticipated and likely to happen. It allowed the possibility that if the resident had refused the day care meal, then it would not have to be paid for. It did not allow for an artificial interpretation that permitted the home to retain the funds provided for resident’s meals and require the resident to pay for their own day care meals having passed up the home’s ‘sumptuous’, packed lunch alternative.

The panel considered that an honest, ordinary, and decent person would think the same. If there was a definite and supportive legal opinion to the contrary which was relied upon, the panel considered that the honest and decent person would have taken the obvious step of providing that opinion rather than relying on repeated argumentative assertions that the opinion existed and had been depended on. Mrs Wylie’s defence to this extent had not been made out. The panel cannot rely on an unsupported assertion which was stubbornly withheld by Mrs Wylie in the same way that the bank records which allegedly proved the refunds were withheld.

In determining what Mrs Wylie knew or must have known – her state of mind at the relevant time, the panel has to rely on the available evidence and the inferences which flow from that evidence. The panel considered that Mrs Wylie could easily have produced the legal opinion if it existed in the form insisted upon by Mrs Wylie. The opinion could not be regarded as privileged once the purported contents were disclosed.

The panel considered that the contract is clear and stated that the Homes were to meet the cost of the meals. The panel considered that to suggest that the provision was not legally enforceable was flawed because that would indicate that the legislation was not enforceable.

Mrs Wylie's overarching defence in these proceedings was that she was not in charge of anything other than care. Mr Wylie was in charge of finances. She denied having any knowledge of anything connected to the Homes' finances.

Ms 22 was supportive of Mrs Wylie and she did her best to assist the panel. In her oral evidence, stated that "in her professional opinion" Mrs Wylie would not have been aware of the charges for meals at the Appleby Day Care centre. She also stated that she was not aware of the 2002 contracts but confirmed that residents were charged for meals or could be provided with a packed lunch. Ms 22 did not support her professional opinion with any form of records or contemporary notes.

During cross examination Mrs Wylie accepted that she was the "registered person for care". In light of this, and the fact that she was a Registered Manager of the Homes, the panel was of the view that it would be inconceivable that someone in her position would not know about the 2002 contract. She had an obligation to understand the contract. Additionally, as part of Mrs Wylie's care obligations, she would have been responsible for overseeing the practical arrangements for the residents' visit to the day-care centre and for them to have available enough money to pay for the day care meals.

The panel bore in mind that the NMC's case in relation to charge 1 was for the period of January 2005 to December 2011. It noted that Mrs Wylie did not address the figures calculated for this period. In her response to the Trust's report, in 2012, pertaining to charges for day care meals, Mrs Wylie stated that she was surprised that such charges were being made.

After seeking legal advice in 2011, the total amount calculated was £6923.80. In Mr Wylie's submissions, it was stated that a request was made to staff at the home to go through all the resident's cash books from April 2004 to February 2010. He further stated that all debts were repaid on 4 December 2012.

However, Mr 3 and Ms 10 both stated in oral evidence that there was no evidence that the money was refunded to the residents. Additionally, there was no evidence before the panel to demonstrate that the money charged to residents was paid back into their

respective bank accounts. The panel was of the view that Mrs Wylie had a duty to safeguard residents. As the Registered Manager, she would have known, with full knowledge, of the care needs for each resident. She knew that residents should not have to pay for meals when visiting Appleby Day Care Centre and allowed them to continue paying, contrary to the 2002 contract.

Despite this, even when the relative of Resident B raised concerns about Resident B being charged for day care meals, Mrs Wylie did not investigate further. Instead, she sought legal advice.

Financial advantage was obtained by requiring residents to meet the costs of day care meals or to accept a packed lunch alternative. Funds provided to meet the costs of the meals were retained by the home.

In light of the above, the panel was satisfied that an ordinary decent member of the public would consider Mrs Wylie's actions in charge 1 to be dishonest.

Charges 3, 4 and 5

3. On various dates between 2005 and 2012, inappropriately charged Resident T additional payments for accommodation and care without clinical justification, on one or more of the occasions set out in Schedule B.

4. On various dates between April 2002 and October 2011, inappropriately charged Resident U additional payments for accommodation and care, on one or more of the occasions as set out in Schedule C.

5. On various dates between April 2005 and May 2006, inappropriately charged Resident V additional payments for accommodation and care without clinical justification, on one or more of the occasions as set out in Schedule D.

Schedule B

Dates	Trust Payment	Amount
26 December 2005 to 29 January 2006	£184.33 per week	£40.00 per week for day care £285.67 per week for care Total: £1628.35
1 April 2009	Unknown	£241.00 per week
From 1 April 2011 to at least 1 May 2012	£360.64 per week to mid-April, £355.72 from mid-April	£362.83 per week
1 January 2011 to 28 February 2011	£360.64 per week	£2851.92 for care £170.55 for DLA for mobility Total: £3022.47
1 March 2011 to 31 March 2011	£360.64 per week	£1498.45 for care £94.75 for DLA for mobility Total: £1593.20
1 April 2011 to 30 April 2011	£360.64 per week to mid-April, £355.72 from mid-April	£1543.04
1 November 2011 to 30 November 2011	£355.72 per week	£1554.99

Schedule C

Dates	Trust Payment	Amount

April 2002 to March 2003	£271.00 per week	£119.00 per week
April 2003 to March 2004	£278.00 per week	£132.00 per week
26 May 2008 to 29 June 2008	£405.00 per week	£250.00 per week for day care Additional £195.00 per week for care Total: £2225.00
Between unknown date and 2009	Unknown	Additional £250.00 per week charged
2010 to 19 October 2011	£426.00 per week	Additional charge of around £461.00 per week

Schedule D

Dates	**Amount**
April 2005 to April 2006	Additional £120.00 per week

These charges are found proved.

When considering charges 3, 4 and 5 the panel bore in mind that a system of care management was introduced in Northern Ireland in 2002. The legislation that brought care management into existence was called the Personal Social Services (Preserved Rights) Act 2002. It provided for a transitional period in which responsibility for meeting the costs of existing arrangements were transferred to Trusts. Therefore from 2002 all residents that the Trust was responsible for fell under the care management system. As a result, any previously agreed arrangements for individual residents were superseded

by the new arrangements. In the new regime each individual affected was allocated a care manager who advocated on their behalf. The net result of the change was that, funding for residents' accommodation in care homes moved from the Department of Health and Social Services (DHSS) to individual Trusts.

The new arrangements introduced a maximum standard amount that Trusts would pay for services provided by care homes. If additional care was required for an individual resident, then special provision was put in place through the care management process. In such cases it was for the Trust to pay the additional amount and it was not open to a third party to pay for contracted services.

Each of the residents (T, U and V) referenced in these charges were moved into the care management system as part of these new arrangements. Resident T was moved to Hebron House in 1990 having previously resided in St Luke's Psychiatric Hospital. The evidence presented by the Trust, as part of its investigation into the management of the homes, showed that Resident T was transferred into the care management system in 2002 following changes in DHSS legislation. Resident U also moved to live in Hebron House in 1990 having previously been an inpatient in St Luke' Psychiatric Hospital. Evidence from Resident U's care manager confirmed that he was moved into the care management system in 2002. It was also confirmed at that time that the regional rate of payment was sufficient to meet his needs. Resident V was resident in St Luke's before 1990 and was then moved to Hebron House under the care management system. A copy of his care management assessment plan dating from 2002 was provided to the Panel.

The panel considered each of the charges separately but as the evidence in relation to each was broadly similar in nature it dealt with them together. In reaching its decision, the panel took account of the evidence from Mr 3, Mr 6 and Ms 10 who investigated the allegations on behalf of the Trust. The panel also heard evidence from Mrs Wylie.

Mr 3 in his witness statement stated:

> *"The investigation team were asked to examine additional payments in respect of three residents: Resident T, Resident U and Resident V and to report on the*

reasonableness and appropriateness of those payments. There appeared to be a lack of comprehensive assessments completed by the trust which made it difficult to ascertain how the care needs of each resident were reviewed and whether additional payments made in respect of the residents were appropriate... the reason provided for charging additional payments was due to "challenging behaviour" for Resident T and Resident U…During the investigation, we could find no evidence of challenging behaviour…"

Mr 3 reiterated this in his oral evidence.

The panel took account of all of the evidence adduced by the NMC in support of the figures set out in Schedule B, Schedule C and Schedule D for Resident T, Resident U and Resident V respectively. For each resident the evidence included some or all of the following. Individual contracts with the home, invoices for additional charges levied, internal memos in respect of care management, written correspondence between the homes and the Trust, an extract from a bank account held on behalf of Hebron House residents', correspondence with Trustees and the Official Solicitor for the Court of Judicature of Northern Ireland. The panel was satisfied that that the figures relating to the additional amounts charged for each of the three residents were accurate and could be corroborated against the evidence presented.

The panel bore in mind that during the hearing Mrs Wylie had never challenged the fact that additional payments were made or disputed the amounts charged. Her defence was that the additional charges were justified because of the residents' additional needs and that their behaviour was challenging. She stated that when Resident T, Resident U and Resident V were moved from St Luke's Psychiatric hospital to be cared for in Hebron House in 1990 it was agreed with social services that their additional needs would be paid for. Mrs Wylie contended throughout that the arrangements for additional payments were made in conjunction with social services prior to the residents arrival at Hebron House.

Mrs Wylie stated that Ms 4 was the social worker involved in organising the transfer of Resident T, Resident U and Resident V from St Luke's to Hebron House. She allegedly

made the initial arrangements and agreed what payment should be made. However, the panel was unable to verify Mrs Wylie's claim as no evidence was available or presented to it by Mrs Wylie.

In her written evidence Ms 10 stated that Mr Wylie confirmed there was an original agreement with the Trust for additional payments to be made to particular residents because of complex needs. As a result, all of the Trust's archived files were searched but no evidence of such an agreement was found. The Trust later contacted a resident's key worker (a hospital social worker Ms 4). However, she refuted that she had given any indication to Mr and Mrs Wylie that there would be additional payments and that this was not within her remit. Mr Wylie was asked by Ms10 that if he could provide any evidence of such an arrangement then she would be happy to change her mind. However, Mr Wylie produced no evidence.

Ms 10 gave a comprehensive overview of the areas of the investigation she was involved in and tried to assist the panel throughout. The panel found her evidence was clear.

Ms 10 in her oral evidence stated that if the Trust had been aware that there was a need for additional care needs, then a comprehensive assessment of those needs would have been commissioned to satisfy the Trust as to what exactly was required. At that point a contract would have been entered into between the Homes and the Trust to cover the cost of any additional care needs.

However, the panel bore in mind that the Care Management system introduced in 2002 superseded any arrangements previously made. The panel noted that the contract between Hebron House and the Trust which commenced in August 2002 and remained in place until 2009 and which applied to residents T, U and V, stated under the heading Contract Period the contract *"supersedes all existing Home Care Services Contracts for the aforementioned Purchasers".*

The panel also bore in mind that Mrs Wylie, as the Registered Manager of two residential care homes, would have been fully aware of the magnitude of change

brought about by the Care Management system introduced in 2002. Further, the panel considered that she would have been aware of the contents of the contract between the Homes and the Trust which governs the Homes' services. The contract was specific in that it included the residential and nursing home standard rates for the year 2002/2003. It took account of the correspondence between the Trust and Hebron House in relation to this contract dated 14 June 2002 which stated:

> *"[a]ll care managed clients referred by any of the Trusts within the Southern Board area should be cared for within the auspices of this Contract."*

The panel was satisfied that Resident T, Resident U and Resident V would have come within the care management system in 2002 and the only payment that Mrs Wylie and the Homes should have received was the regional rate. Therefore, any arrangement made in 1990 would have been superseded.

In light of the above, the panel did not accept Mrs Wylie's defence that additional payments were justified due to prior arrangements had been made with the residents and their representatives. No evidence was presented of any such agreements and, even if there had been they it would not have validated the additional payments. This was because from 2002 Resident T, Resident U and Resident V were under the Care Management system and any such arrangements ended in 2002.

A further defence put forward by Mrs Wylie for charging additional fees to residents T, U and V was because of their alleged "challenging behaviour". However, the panel could not find any evidence of this and noted that Mrs Wylie was only able to give a single example in relation to Resident U.

Mr 3 in his witness statement commented in detail about the issue of challenging behaviour.

> *"The reason provided for charging the additional payments was due to "challenging behaviour" for Resident T and Resident U. When defining challenging behaviour, the investigating team asked the challenging behaviour*

team at the Trust and they suggested the definition by Emerson et al 1995. " Severe challenging behaviour refers to behaviour of such an intensity, frequency or duration that the physical safety of the person or others is likely to be placed in serious jeopardy, or behaviour which is likely to seriously limit or delay access to and use of ordinary community facilities" We therefore looked at available documentation, evidence of behaviours and assessments in relation to the three residents as to whether their behaviour was challenging and whether this could reasonably be used as a reason requesting additional payment."

"…During the investigation, we could find no evidence of challenging behaviour in the context of Emerson's definition in respect of Resident T nor was there any evidence in file records or management reviews."

In an email to the RQIA on the 26 July 2012 Mr Wylie stated that Resident T:

"avails of expertise skills by senior personnel within the organisation to enable the resident to overcome long-term mental institutional fears… When we visited Hebron House, we could find no evidence to support the claim that Resident T required supervision that exceeded the level of supervision that could reasonably be expected from a residential facility for residents with a learning disability. There was a lack of comprehensive assessment documentation prior to 31 July 2012. The assessment dated the 31 July 2012 did not identify challenging behaviour and therefore made no mention of additional supervision that Resident T required."

With regards to Resident T, Mr 3 in his witness statement stated:

"…if Resident T did have challenging behaviour that required additional payments there should have been some evidence, such as incidents that had been reported by Mrs Wylie to the trust but there were none found. There was also no applications or admissions in relation to his mental health…"

However, Mr 3 witness statement further stated:

"When we visited Hebron House, we could find no evidence to support the claim that Resident T required supervision that exceeded the level of supervision that could reasonably be expected from a resident facility for residents with a learning disability… I would have expected there to be clear assessment evidence of the need for additional supervision which we could not locate. The assessment dated 31 July 2012 did not identify challenging behaviour and therefore made no mention of additional supervision that Resident T required."

Further, Ms 10 also stated:

"When I raised this with Mrs Wylie during the meeting she continued to talk about the challenging behaviour of the residents. I said to Mrs Wylie that there were no assessments or evidence to support that any of the residents they charged additional payments had challenging behaviour…"

In oral evidence Mr 3 was asked what action should have been taken by Mrs Wylie if resident T had met the definition of challenging behaviour. He responded by stating "They would have approached the Trust. Probably had a multidisciplinary meeting, presented the evidence. If that had been the case, there probably would have already been informal discussions between herself and the respective care manager, or key worker for the Trust, on behalf of the client to ascertain the validity and try and manage the situation" Mr3 was then asked" Without those steps having taken place, was there legitimate scope for top-up fees to have been charged?" The answer given was "No".

With regards to Resident U, Mr 3 stated:

"There is no documentation on file to evidence a discussion between the Trust and Hebron House supporting the need for additional payments. During the visit on 1 May 2012, Mr and Mrs Wylie stated that the additional payments were needed for high maintenance, challenging behaviour and being provided with a specialised en suite. There was no clear record that explains the amount of additional payment and how that had been reached…"

Mr 3 was asked in oral evidence if Resident U's behaviour was challenging. He responded by saying "No". He added "The investigation team were unsure what the additional rate was for in relation to challenging behaviour when Resident U did not require additional supervision to be provided to other residents. In fact, further documents from doctors showed Resident U to be manageable, going on holiday and completing tasks around town."

The panel acknowledged that Resident U had shown some challenging behaviour. Mr 3 in his witness statement confirmed that Mrs Wylie reported that this only occurred once a year and was resolved with minimal intervention. There were no records of incidents reported to the Trust's DATIX system in respect of Resident U.

The panel also took account of Resident U's care manager Mr 21 who, in his witness statement, stated:

> *"The only charge that should have been paid in relation to Resident U's care was the regional rate from 2002…I did not consider that there should have been any additional charge from Hebron House as all of Resident U's care needs could be met by the standard care provided in a residential home. I reached this conclusion based on assessments for Resident U… and I assessed that Resident U's care needs were met by his placement in Hebron House."*

The panel bore in mind that Mr 21 was directly involved with the care of Resident U. It was satisfied that Mr 21 was clear in his assessment of Resident U and that he saw no reason for additional charges being levied.

In oral evidence Mr 3 was asked what should have happened if Resident U had met the definition of challenging behaviour. He responded by saying that they should have followed the process and requested a meeting to review the person's needs. He was then asked "And without those steps being taken, were such charges against Resident U appropriate? Mr 3 responded "No".

With regards the appropriateness of charging Resident V additional payments the following evidence was considered. Written evidence from Mr3 and Ms10.

In his witness statement Mr 3 stated that the Trust raised concerns in December 2005 about Resident Vs additional payments. Internal Trust emails stated that Resident V required extra care due to physical problems and the lack of day care. There appeared to be no evidence to back up this reasoning. The evidence also shows that Mr Wylie advised the Trust that the arrangement with Resident V was a private one, that he required extra care due to physical problems and because the home had no day care this had to be provided during the day. Mr 3 further stated that Residents Vs needs were reassessed in 2009 and he met the standard residential placement, which meant his care could be provided at the regional rate. In 2008 Resident V was transferred to a different care home. His family queried with the new home as to why no additional changes were being levied given that he had been paying £170 extra per week at Hebron House.

Mrs Wylie was asked about this when giving evidence. In response to the fact that the home was charging Resident V an additional £120 per week as evidenced from an internal Trust email Mrs Wylie stated, “I don’t know anything about finance”.

With regards to Resident V, Ms 10 in her witness statement stated:

> *“Resident V had moved to an alternative placement in 2008. This placement was at the regional rate and the new home did not raise any concerns regarding challenging behaviour and the need for a ‘top-up’ payment... [13] In relation to Resident V, we were unaware that he was being charged a top up or additional fees until he moved from Hebron House to another home in Belfast. Resident V’s family asked why they were not being charged a top up because Resident V had deteriorated and they felt that he required more care now than he had done in Hebron House.”*

Ms 10 reiterated this in her oral evidence.

The panel noted that Mr Wylie stated that the home had a private arrangement with Resident V and the reasons for the additional charges had been explained to the Trust.

However, the panel reminded itself that as per the Care Management system introduced in 2002, all prior arrangements were superseded and that the amount that should have been charged was the regional rate agreed with the Trust as per the contract operating at the time.

Another defence put forward for maintaining the arrangements in place prior to 2002 was that Residents T, U and V fell outside the care management system and were not care managed. However, the panel had already determined that Resident T, Resident U and Resident V fell within care management.

The panel was satisfied that any arrangements Mrs Wylie claimed to have had with Resident T, Resident U and Resident V would have been superseded by the care management system. It had no evidence before it of any services provided by the homes which were over and above the standard services already contracted for.

The panel was also satisfied that Mrs Wylie, as the Registered Manager of the Homes, would have been aware of the significant changes brought by the introduction of care management in 2002. It was also satisfied that she would have had knowledge of the 2002 and 2009 contracts that existed between the Homes and the Trust as it was these that determined the business relationship between both parties.

The panel determined that there were no circumstances whereby additional payments should have been charged to Resident T, Resident U and Resident V.

The panel therefore find charges 3, 4 and 5 proved.

Charge 6a and 6b

6. On one or more occasion as set out in Schedule E, overcharged residents for transport costs in that you:

a. Did not divide the cost of group transportation amongst residents;
b. Charged for a greater number of miles than the distance of the journey.

Schedule E

Date	Mileage	Google Maps Mileage	Destination	Cost to each resident	Residents	Total Cost	Overcharge including mileage and residents (if £0.60 is an appropriate charge per mile)
12.01.2011	35	14.4	Southern Regional College, Armagh	£21.00	R, L, S, T, N, AD	£126.00	£117.36
28.01.2011	14	14	Armagh Omniplex	£8.40	L and T	£16.80	£8.40
17.03.2011	18	14	Armagh	£10.80	X, AB, O, P	£43.20	£34.80
06.04.2011	35	10	Southern Regional College, Armagh	£21.00	E, I, Z	£63.00	£57.00
09.04.2011	44	32.8	Oxford Island	£26.40	AE, I, K, G, H, C, Z	£184.80	£165.12
28.04.2011	64	57.2	Lisburn	£38.40	Z, E, AE, A, I, AF, H, J, C, D	£384.00	£349.68
19.03.2011	3	1	Gosford Forest Park	£1.80	M and P	£3.60	£3.00
12-14.11.2011	355	73.6	Newcastle	£213.00	AE, AG, G, H, D, AH	£1278	£1233.84
04.03.2011	112	85	Omagh	£67.20	AI	£67.20	£16.20
14.05.2011	28	19.2	Scarva Park	£16.80	A, I, K, L, G, H, Z, D	£134.40	£122.88
16.05.2011	34	23.4	Craigavon	£20.40	G, C, E	£61.20	£47.16

This charge is found proved both these sub-charges proved.

Before considering this charge, the panel made some minor amendments to Schedule E. With regards to the 28 April 2011 it noted that 10 residents had been listed as travelling to Lisburn when in fact the number travelling was nine. The Panel determined that the alleged overcharge should be £311.28 as opposed to £349.68.

The panel also noted an error regarding the dates of a trip to Newcastle, Co Down. The date given for the trip was 12 to14 November 2011 whereas it should have read 12 to 14 April 2011.

The panel considered each of these sub-charges separately but as the evidence in relation to each was broadly similar it dealt with them under one heading. Whilst the panel noted that this charge was about transport, it considered that it was not possible to consider transport in isolation without reference to supervision. This was because the DLA rate for mobility (high or low rate) determined the supervision charge levied on residents.

In reaching this decision, the panel took account of the evidence of Mr 3, Mr 5, Ms 10, Mr 16, Ms 22 and your evidence.

The panel took account of the Hebron House and Bawn Cottage Transport Policy which was revised in January 2011 and comprised the following key elements:

> *"Residents whose DLA Mobility component is credited to Hebron House/ Bawn Cottage will be charged 60p per mile.*
>
> *Supervision will be charged at £11.25 per hour for those receiving the low rate of DLA.*
>
> *Supervision will be charged at £22.50 per hour for those receiving the high rate of DLA.*

No additional charges will be levied if mileage and supervision exceed Mobility Allowance

A logbook of journeys is recorded."

In respect of transport costs, Mr 3 stated in his witness statement that:

"Resident AF went on social outings from Bawn Cottage, she was charged 60p per mile for journeys and £22.50 an hour for supervision as she was on the higher rate of DLA for mobility…

…The investigation team noted that the supervision and mileage costs continued to apply to each resident, regardless of how many residents were on the journey. This is concerning because it should be divided between the number of residents and staff members should not be charged at one to one supervision when in fact one staff member is supervising nine residents.

Resident B was charged 60p per mile irrespective of the number of residents sharing the transport but when he attended the church, expenses were shared as evidenced in the report presented by Hebron House, which says that residents were collected and returned along with other residents by private taxi."

The panel also took account of the Transport reconciliation sheets for July to September 2011. The panel noted that it showed the name of the resident, where they were travelling to method of transportation, the mileage, google maps mileage, destination, cost to each resident, residents travelling and total costs and degree of overcharge. The panel was satisfied that Schedule E was an accurate reflection of the overall cost per resident.

The panel noted that Mrs Wylie never provided the panel with a comprehensive response. However, Mrs Wylie's defence was that the Homes in fact never charged residents for transport or supervision. Rather, the Homes continued to operate a policy

whereby, if residents opted in, their DLA payments were paid into a pooled transportation account out of which transport and supervision costs were paid. The transport logs were merely used to identify residents who were not using the scheme as much as others. She further stated that the Homes in fact subsidised the transport scheme.

The panel noted that Mr 5, when giving evidence, was at times defensive and only reluctantly made concessions. He accepted when giving oral evidence that if several residents went on one journey, the mileage charge should be divided by the number of residents on that journey. In his witness statement he stated:

> *"Up to 2009, most transport schemes involved the pooling of Disability Living Allowances (Mobility Component) of residents in a home and the provision of transport for the group as a whole….From the Trust's point of view, it was a simple approach and meant that all residents received the same provision…In 2009 RQIA began to require more rigorous compliance with the Regulations for Residential Homes and Minimum Care Standards"*

Under cross examination, Mr 5 accepted that this widespread practice was non-compliant with RQIA regulations and stated the right of the individual to have their own money and have it accounted for separately.

The panel was of the view that it was clear that each individual resident was charged a flat rate of 60p per mile for each journey taken. There was no evidence before the panel that showed the costs of each journey were calculated and then divided equally among the number of residents who actually made the journey.

Therefore, it was satisfied that Mrs Wylie overcharged residents for transport costs.

With regards to charge 6b, Mr 3 in his witness statement stated:

> *"The investigation team noted several mileage discrepancies such as the mileage from Bawn Cottage to Market Place, which AA route planner calculated*

as a return journey of 10.2 miles whereas the reconciliation sheet documented 18 miles."

Mr 3 reiterated this in his oral evidence. He stated:

"…when you compared most of the mileage in relation to what was claimed here and what Google Maps, it was quite a significant difference."

Mr 16 in his witness statement stated:

"In other journeys, where the destination was recorded, I used google maps to check the mileage claims...I found that there was a significant discrepancy between the mileage that Hebron House was charging the residents and the mileage Google maps said was the mileage. Sometimes the charge was double the length of the journey… Between January and May 2011… Mrs Wylie stated to the trust that she wrote the journeys from memory."

While the panel noted that the accuracy of the mileage attained from Google Maps was not entirely accurate it considered that it was a reasonable methodology to calculate mileage. In these circumstances, the panel was of the view that there was clear discrepancy between the mileage attained from Google Maps and the mileage claimed by Mrs Wylie as shown in Schedule E. It particularly noted trip to Newcastle on 12 to 14 April 2011 where Mrs Wylie claimed that the mileage travelled from Bawn Cottage to Newcastle was 355 miles, however Google Maps calculated 73.6 miles. The panel noted the suggestion from Mrs Wylie's documentation that he drove the bus back to the Homes each evening with no residents onboard. Therefore, no transport charge should have been levied for this additional mileage.

In light of this the panel was determined that Mrs Wylie charged a greater number of miles than the distance of the journey.

The panel therefore finds both sub-charges proved.

Charge 7

7. You actions in Charge 6a. and/or 6b. were dishonest in that you knowingly overcharged residents for mileage to obtain financial advantage.

This charge is found proved.

The panel took account of the test for dishonesty outlined in charge 2.

The panel noted that 'the 2005 Regulations' were in force from 1 April 2005. They were therefore applicable during the period during the period January 2011 to May 2011 when the alleged overcharges for transport were incurred as set out in Schedule E. Mrs Wylie as the Registered Manager and the Registered Person had responsibility for the homes' finances during this time.

The panel took account of the Hebron House and Bawn Cottage Transport Policy for 2011 and 2012.

The panel bore in mind that Mr 5, who was employed by Mrs Wylie as a consultant, confirmed that the transport policy was applicable before he commenced as a consultant. The panel noted that the transport policy was referred to in the Homes' contracts with individual residents.

In oral evidence Mr 5, when asked whether transport costs should be divided, stated:

> *[Mr Hayward]: As part of the basic principles that you would want incorporated into that, would you agree that, if several residents went on one journey, the mileage charge should be divided by the number of residents on that journey? [Mr 5]: Yes.*

In oral evidence, Ms 22, when asked by Mr Hayward about individual charging, Ms 22 responded to the suggestion that residents were being individually charged 60p per mile commented as follows:

"…that's definitely not right, that's not fair. That's not how decent people work."

The panel took account of the travel logbooks and transport reconciliation sheets, which provided the basis of finding charges 6a and 6b proved. Mr 3 in his oral evidence confirmed that the travel logbooks and transport reconciliation sheets came from Hebron House and Bawn Cottage. The panel determined that Mrs Wylie would have had full knowledge as to how the transport system operated and how charges were levied and attributed to individual residents.

The panel was told repeatedly by Mrs Wylie that she was only responsible for care and had no responsibility for finance. However, the panel determined that Mrs Wylie would have known what benefits each resident was receiving and was entitled to as this was related to their care needs. The panel determined that Mrs Wylie would have known that mileage costs were not being sub-divided on a fair and equitable basis and that every individual on a trip was paying the full 60p per mile. When asked during her evidence in chief if the homes charged for transport and supervision Mrs Wylie replied "No". Mrs Wylie had said this despite there being evidence of her signing at least one residents contract.

Mrs Wylie stated that residents were never charged for transport and supervision. Instead, she stated that residents could opt in their DLA payments into a transportation pool account. This is where transport and supervision costs were paid.

The panel was satisfied that Mrs Wylie, as the Registered Manager, would have had full knowledge of the transport policy and how it worked. She knew that each resident was being charged a flat mileage rate of 60p per mile rate rather than the costs of a specific journey being divided equally by the number of residents travelling. The panel also noted that Mr 16 in his witness statement stated that "*Mrs Wylie stated to the trust that she wrote the journeys from memory."* This also provides evidence that Mrs Wylie knew the detailed journeys of the residents.

The panel reminded itself that Mr 6, who worked part time at Hebron House and Bawn Cottage in 2010, under cross examination stated that Mrs Wylie, as the registered manager, would have had responsibility for the supervision As a result, it was satisfied that Mrs Wylie would have knowledge of where the residents were travelling to and for what purpose. The panel noted that she arranged the trips for the residents and, on occasions, went with them.

The panel determined that the way the policy operated was manifestly unfair because some residents would pay into the transportation pool and not gain their fair share from it. This had the potential to cause financial disadvantage to them, as they did not travel or travelled irregularly. This was despite paying their full DLA monies into the pooled account. Therefore, those using the scheme more would be subsidised by those using it less.

The panel concluded that Mrs Wylie was fully aware of that transport costs were not being sub- divided amongst residents and that they were being overcharged.

In light of the above, the panel was satisfied that an ordinary and decent member of the public would consider Mrs Wylie's actions in charges 6a and 6b to be dishonest. Additionally, Mrs Wylie obtained a financial advantage for the Homes by operating the transport policy in this way.

Charge 8

8. On 21 January 2011, charged Resident X £117.60 for transport and supervision which she did not receive.

This charge is found proved.

The allegation was that Mrs Wylie charged Resident X £117.60 for transport and supervision for a trip to visit her mother, on 21 January 2011, at Chestnut Lodge Home which she did not receive.

In reaching this decision, the panel took account of the evidence of Mr 3 and Mrs Wylie's evidence.

Mr 3 in his witness statement stated:

> *"The investigation team looked in detail at the transport costs to Resident X…The transport reconciliation sheet recorded the duration of the visit as eight hours of supervision at £11.25 per hour and the distance as 46 miles, which is charged at £0.60 per mile, costing £117.60 in total for both transport and supervision. When the investigation team looked at the AA route planner, the return journey was calculated as 30.4 miles…[The Home Administrator]'s checked the daily records for 21 January 2011 and found no record of a visit by Resident X on that day or for two months prior to and subsequent to that date… Based on the information outlined above the investigation team concluded that there was no evidence that the visit… took place."*

The panel considered the documentation provided by Mr 3. It took account of the travel logbooks and transport reconciliation sheet for Hebron Home. It confirmed that on 21 January 2011, Resident X visited Benburb/Chesnut. The distance charged for was 46 miles at 60p per miles equating to a cost of £27.60. In addition, the resident was charged for 8 hours supervision at a cost of £11.25 per hour. This equated to £90. The overall charge levied to resident X was £117.60. The reason recorded for the journey was so that Resident X could visit her mother.

The panel viewed an extract from Resident X's Daily contact sheets for the 21 January 2011 which stated:

> *"Showered before going to Meadowcraft"*

The panel also noted an email dated 29 January 2013 from Meadowcraft day centre. It was in response to an enquiry made by a member of the Trust's investigation team as to whether Resident X had attended Meadowcraft day centre on Friday 21 January

2011. Mr 3's Investigation Team contacted Meadowcraft and received the following response by email as below:

> *"I was informed by a member of staff…who checked the attendance records for 2011. I was informed that Resident X did attend on Friday 21/01/2011. I queried if she had left early on that particular day and was told that she had attended the full day."*

The panel also took account of an email dated 31 January 2013 from Chestnut Lodge Care Home detailing the dates that Resident X visited her mother. The 21 January 2011 has not been listed as a day when Resident X visited.

Mr Wylie in his final submissions stated:

> *"Mrs Wylie cannot be held responsible for the record keeping failings at Chestnut Lodge nursing home. For [Mr 3] to say that Mrs Wylie did not bring [Resident X] to Chestnut Lodge Nursing Home to see her mother is untrue. [Mr 3] is not a credible witness. NMC has failed in their duty to investigate thoroughly."*

The panel preferred the evidence of Mr 3 and the contemporaneous evidence that supports it. It was of the view that it demonstrated that, on 21 January 2011, Resident X attended Meadowcraft day centre and was there all day. The panel determined that Resident X should not have been charged £117.60 for transport and supervision, for a trip to visit her mother at Chestnut lodge Home, which she did not receive.

The panel therefore finds this charge proved.

Charge 9

9. Your actions in Charge 8 were dishonest in that you charged Resident X for transport and supervision which you knew she did not receive.

This charge is found proved.

The panel took account of the test for dishonesty outlined in charge 2.

The panel reminded itself that it was for the NMC to prove the charge. The travel log and transport reconciliation sheet produced by Hebron House were provided by the NMC. It showed that Resident X was apparently transported to Chestnut Lodge Care Home on the 21 January 2011 to visit her mother. Other evidence considered by the panel showed that this visit in fact did not take place and that Resident X actually spent the day in Meadowcraft day centre.

The panel was not shown any evidence to confirm that it was not Mrs Wylie herself who organised the visit. Her response to the charge suggested she was aware of the visit and confirmed it had taken place. In fact, she said that the failure not to record Resident X's visit was down to the record keeping at Chesnut Lodge. To levy transport and supervision charges against Resident X's account for visiting Chesnut Lodge was in her view correct. This was in direct contradiction to the evidence received from both Meadowcraft day care and Chesnut Lodge care home. They advised, on the one hand, that Resident X spent the day in Meadowcraft day care and on the other that there was no evidence that Resident X actually visited Chesnut Lodge on the 21 January 2011.

In response to the charge Mrs Wylie stated that it was untrue that Resident X did not attend Chesnut Lodge Care home on the 21 January 2011. Mrs Wylie suggested that Chesnut Lodge care home had failed to record Resident X's attendance and that she could not be held responsible for this as she had personally taken Resident X to Chestnut Lodge. However, Mrs Wylie did not provide the panel with evidence that she had actually made the journey and provided eight-hour supervision for Resident X.

However, Mrs Wylie's rebuttal was a direct challenge to the records, which come from three different sources and were clear and made near the time of the event. The panel preferred the documentary evidence rather than Mrs Wylie's insufficient rebuttal.

Resident X's personal profile stated:

"On 15/01/2013 the manager informed the Investigation Team that Resident X is dropped off by a blue mini bus or a silver car when she visits her mother. Her visit usually lasts 1 to 2 hours. He informed the team that Resident X arrives and leaves on her own and is not supervised by Hebron Staff."

The panel determined that Mrs Wylie was being dishonest when she charged Resident X for transport and supervision which she knew Resident X did not receive and, on balance, must have known Resident X did not receive. The panel was satisfied that an ordinary and decent person would have no difficulty in characterising this conduct as being dishonest.

The panel therefore finds this charge proved.

Charge 10

10. On unknown dates, obtained payments from Resident B for supervision when he had not been assessed as requiring it.

This charge is found not proved.

In reaching this decision, the panel took account of the evidence of Mr 3 and the evidence of Mrs Wylie.

Mr 3 in his witness statement stated:

"Resident B had a care review on 12 March 2010 and there were three options for transport, a taxi Hebron House transport through the DLA mobility or mileage rate at 60p per mile and supervision at £11.25. Resident B was charged 60p per mile irrespective of the number of residents sharing the transport but when he attended the church, expenses were shared as evidenced in the report presented by Hebron House, which says that residents were collected and returned along with other residents by private taxi. The expenses are shared. I attach to my statement the report as exbibit AH 42. (Reproduced below) Resident B is

charged £11.25 per hour for supervision outside Hebron House. The only references to Resident B's need for supervision are an annual review which states that Resident B collects magazines from Hills supervised…

It is apparent that resident B is charged for supervision, at £11.25, when external to the building, when walking or being transported. The use of supervision is reported within Hebron House annual report submission stating, "collect magazines from Hills supervised".

The panel noted that Mr 3's witness statement appeared to suggest that when Resident B attended church, he travelled by taxi which was shared with other residents. However, no evidence was presented to show that he required direct supervision when travelling to church.

However, the panel took account of Resident B's 2005 personal profile. Under a heading entitled supervision it stated:

"During a Care Review in 2005 it is noted that Resident B requires "close supervision". An Occupational Therapy assessment dated 22.07.02 indicates that supervision when crossing roads is needed".

The panel accepted that Resident B required supervision. However, no evidence was presented of an up-to-date care review that suggested that the situation had changed. The panel therefore determined that Resident B continued to require close supervision.

The panel reminded itself that it is for the NMC to prove the charge. The panel noted that the transport reconciliation sheets appeared to suggest that that Resident B was charged for supervision. The charge alleges that Mrs Wylie charged Resident B for supervision on "Unknown Dates" and no specific dates were identified. As a result the panel was unable to use the transport reconciliation sheets in its deliberations.

The NMC had not provided the panel with any specific dates that demonstrated that Resident B was charged for supervision when it was inappropriate to do so. Without

specific dates the panel was unable to ascertain when the actual supervision charges were levied. Additionally, outside of the transport reconciliation sheets the panel could not find any other supporting evidence to show that Resident B was charged for supervision.

The panel determined that it had been left to speculate and identify what particular dates the allegation in charge 10 referred to.

The panel concluded that there was insufficient evidence to support this charge and therefore, the charge was found not proved.

Charge 11

11. On one or more occasions as set out in Schedule F, overcharged residents for supervision costs.

Schedule F

Date	**Residents on the Journey**	**Reason**	**Hours**	**Total Supervision Charge**	**Overcharge based on number of residents and appropriate hourly rate of £9.66 for a carer***
12.01.2011	R, L, S, T, N, AD	Trip to College	5	£450.00	£401.70
21.01.2011	N, AD, S	Art Class at Hebron House	2	£112.5	£112.5 (should not require additional supervision charge as already pay for 24 hour care at Hebron House)

29.01.2011	L and T	Armagh Omniplex	5	£112.5	£64.20
17.02.2011	P and AD	Gateway	4	£135.00	£96.36
09.04.2011	AE, I, K, G, H, C, Z	Oxford Island	3	£405.00	£376.02 (one staff member) £347.04 (two staff members)
11.04.2011	E and Z	Armagh Easter Party	4	£90.00	£51.36
14.04.2011	E, AE, H, J, Z	Art class at Bawn Cottage	2	£112.50	£112.50 (should not require additional supervision charge as already pay for 24 hour care at Bawn Cottage)
28.04.2011	Z, E, AE, A, I, AF, H, J, C, D	Lisburn	3/4	£427.50	£350.22 (based on two staff members)
14.05.2011	A, I, K, L, G, H, Z, D	Scarva Park	3/2	£292.50	£234.54 (based on two staff members)

16.05.2011	G, C, E	Craigavon	3	£101.25	£72.22

* calculated from the Trust hourly rate for a Band 2 Healthcare Assistant

This charge is found proved.

Before considering this charge, the panel made some amendments to Schedule F. With regards to the date of 28 April 2011 it noted that 10 residents had been listed in reference to transport to Lisburn. However, the panel noted that there were in fact only nine residents who participated in that trip. Nevertheless, there remained an overcharge.

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In reaching this decision, the panel took account of the evidence of Mr 3, Mr 16 and Mrs Wylie's evidence.

Mr 16 in his witness statement stated:

> *"One further concern following the inspections in December 2011, was in relation to supervision charges for residents on external outings. Hebron House and Bawn Cottage were charging residents £22.50 per hour for supervision on a minibus or car if they received the higher rate of DLA for mobility and £11.25 per hour if the residents were on the lower DLA for mobility…During the inspection, Mr and Mrs Wylie explained that if the residents were on the blue badge, the higher the rate of DLA for mobility, then the supervision charge was £22.50 per hour…*
>
> *I was concerned because…Each resident was charged separately…£22.50 or £11.25 per hour each for supervision, no matter the number of residents to staff members."*

Mr 16 reiterated this in his oral evidence. He also stated ""That is the most excessive charge I've ever come across in my experience of doing inspections"

Mr 3 in his witness statement stated:

> *"The aim of the investigation team was to consider whether the transport costs including the supervision element where reasonable and proportionate. We examined travel log books and transport reconciliation sheets within Hebron House and Bawn cottage…From looking at the documentation, residents were charged…a supervision charge of £11.25 per hour for residents on the lower rate of Disability Living Allowance ("DLA") for mobility and £22.50 per hour for residents on the higher rate…There is no explanation as to how this had been calculated. I expected there to be an individual assessment of each resident in relation to the care they required and working out the cost of providing that care…*

Mr 3 and Mr 5, both on 15 December 2021, reiterated this in their oral evidence.

The panel took account of the Hebron House and Bawn Cottage Transport Policy of 2011 and 2012. Both policies stated the following in respect of supervision charges:

> *"Supervision will be charged at £11.25 per hour for those receiving low rate. Supervision will be charged at £22.50 per hour for those receiving high rate."*

The panel noted that Mr 3 stated in his witness statement that,

> *"Supervision costs should be based on staffing grade and divided by the number of residents on the journey. From wages provided by the Trust for a Band 2 healthcare assistant, this would have been £9.66 per hour…"*

Mrs Wylie did not provide the panel with a comprehensive response in respect of how supervision charges were levied but rather made reference to the 2011 and 2012 transport policies by way of explanation. Mr 16, in a letter to Mr and Mrs Wylie dated 17

April 2012, asked for information on how supervision charges were allocated to residents. No breakdown of the supervisory rate was forwarded to RQIA. However, in an email sent to Mr 16, dated 26 July 2012, Mr Wylie offered the following explanation:

> *"The higher rate charged for supervision are for residents who are in receipt of 'Blue Badge' who require assistance when boarding and disembarking vehicles, assembling wheelchairs and dismantling same as required and safe storage of same during transit. All personal assisting those residents have been trained in moving and handling."*

The panel also bore in mind that Mr 3 in his witness statement stated:

> *"…The Trust pays for 24 hour care for the residents, which is inclusive of supervision costs…There are multiple examples of false supervision costs charged as a review of the mileage book showed that most of the staff used for the journeys were on the duty rota and therefore not additional staff members. Supervision charges were applied individually and not shared amongst the number of residents using the service."*

The panel took account of the figures in Schedule F. It noted that Mr 3 and the investigation team had taken the appropriate hourly rate for a healthcare assistant (HCA) and recalculated the hours worked and, on that basis, calculated the degree of overcharge. The panel determined that the overcharge had been significant.

To understand the degree of overcharge incurred by residents, the panel considered a trip to Armagh college on 12 January 2011 taken by six residents which demonstrated one such significant overcharge. The six residents were Resident R, Resident L, Resident S, Resident T, Resident N and Resident AD and they attended for a total of five hours. Based on the appropriate hourly rate for a band 2 healthcare assistant (£9.66 per hour) the total cost for supervision should have been £48.30. This amount should have been divided equally amongst the residents. However, a charge of £450 in total was levied with some residents being charged £56.25 each and others £110.50

depending on whether they were in receipt of the higher or lower rate of mobility allowance.

The panel was satisfied that this kind of overcharge, as shown in the above example, was repeated throughout the evidence.

The panel determined that using a resident's rate of DLA was neither a fair nor equitable way to way to decide what rate of supervision should be charged. It was inappropriate to charge each individual separately for supervision in circumstances where residents were travelling and attending college together with one member of staff supervising.

The panel also noted that on 21 January 2011, Resident N, Resident AD, and Resident S attended a two-hour SRC art class. The panel understood that this activity took place in Hebron House and those attending were residents of Bawn Cottage. The charge levied for supervision amounted to £112.50 in total, with two residents paying £45 and the other one paying £22.50. The minutes of a meeting between Ms 10 and Mr and Mrs Wylie on 1 November 2012 sought to explain the situation and recorded the following:

> *"Mildred Wylie said that the college courses take place in both homes and that residents are charged in attending Bawn Cottage from Hebron House and vice versa. She also stated that she takes in additional staff to cover these groups and therefore additional costs are incurred for which the home charged supervision."*

However, the panel determined that residents should not be paying for supervision that was already funded by the Trust and therefore was inappropriate and without justification.

In response to this charge Mr Wylie commented on behalf of Mrs Wylie:

> *"Mrs Wylie never charged any resident supervision charges and was not responsible for Finance or overseeing it. Mr Wylie was responsible along with*

[Ms 22]. There were no charges made for supervision until the taxi service was introduced".

In light of the above, the panel determined that Mrs Wylie on one or more occasions as set out in Schedule F, overcharged residents for supervision costs.

The panel therefore finds this charge proved.

Charge 12

12. Your actions as set out in Charge 11 were dishonest in that you knowingly overcharged residents to obtain financial advantage.

This charge is found proved.

The panel took account of the test for dishonesty outlined in charge 2.

The panel noted that 'the 2005 Regulations' were in force from 1 April 2005. They were therefore applicable during the period January 2011 to May 2011 when the alleged overcharges for supervision were incurred as set out in Schedule F. Mrs Wylie as the Registered Manager and the Registered Person had responsibility for the homes' finances during this time.

The panel also bore in mind that Mr 6, who worked part-time at Hebron House and Bawn Cottage in 2010 stated, under cross examination, that Mrs Wylie as the registered manager, would have had responsibility for supervision and care.

The panel noted Resident W's contract with Hebron House which was signed by Mrs Wylie on the 12 February 2012 and by Resident W's sister on the 22 March 2012. The panel also took account of Resident U's contract with the Home which referenced the Transport/Supervision policy and was dated 1 January 2012.

In respect of transport and supervision the policy stated:

> *"Transport is provided and charged to individual residents in accordance with the current Homes 'Transport Policy' (same attached), ... including additional supervision costs for those receiving the enhanced rate of mobility allowance. Year end adjustments are made to ensure residents' individual credit, if any, will be transferred to their personal allowance account. Residents will not be charged for costs incurred over and above of the DLA received."*

The panel determined by signing the contract, Mrs Wylie would have been aware of the Homes' transport and supervision policies.

The panel took account of the oral evidence of Mr 16. He stated that during a Home inspection in 2009, he had asked Mr and Mrs Wylie for sight of the records showing that staff members were being paid £22.50 an hour or £11.25 per hour for supervision. He asked for this information so that he could confirm what the supervision charges were. However, Mr 16 stated that Mr and Mrs Wylie refused him access to the records.

The panel bore in mind that a multi-agency case conference took place on 23 October 2012 to share with Mr and Mrs Wylie the investigation report into potential financial abuse at the Homes.

Ms 10, in her oral evidence, stated:

> *"…in all of the discussions with Mrs Wylie and with Mr Wylie about transport and the unfairness of the system that they were operating at no time did Mrs Wylie say, 'Oh, well, I wasn't aware of this'. Both her and her husband's stance was to defend the position of the home and to refer us to their solicitors, as opposed to say, 'I wasn't aware and maybe there's been a mistake made'."*

In response to residents being overcharged for supervision, Mr Wylie in his written submissions stated:

> *"Mrs Wylie was not dishonest and did not knowingly overcharge residents and never obtained financial advantage. She never charges residents as Mrs Wylie was not responsible for finances. Residents were never overcharged by anyone."*

The panel also noted that at this hearing, when asked if the Homes charged for mileage and supervision Mrs Wylie, in her oral evidence, answered "No".

The panel determined that Mrs Wylie was aware of the transport polices, was present when discussions took place regarding polices, and signed one herself. The policy was enforced and communicated to residents. However, it noted that it was not made clear to residents, and the relatives of these residents, how the charges would be levied in practice and that supervision costs would not be shared.

The panel was of the view that Mrs Wylie as the registered manager of the Homes would have had an in depth knowledge of the costs of supervision. She would have known that by not dividing the supervision charges, residents would have likely been overcharged. This would not have been apparent to the relatives or next of kin who signed the contracts.

Additionally, because Mrs Wylie was the Registered Manager and responsible for care she therefore would have known what level of supervision was required for individual residents. It noted that extra staff were brought in to assist with supervision. It further noted that, on occasion, those brought in to supervise were members of the Wylie family.

The panel concluded that Mrs Wylie was fully aware of the charges being levied for supervision and that she was dishonest because she knowingly overcharged residents.

In light of the above, the panel was satisfied that an ordinary and decent member of the public would consider Mrs Wylie's actions in charge 11 to be dishonest.

Charge 13

13. Between 2009 and August 2012, allowed the Co-owner of Hebron House, Mr Wylie, to remain the appointee for Resident W when you had been told that it was inappropriate due to a conflict of interest.

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 3, Ms 10, Mr 16 and the evidence of Mrs Wylie.

Mr 16 in his witness statement stated:

> *"The RQIA report detailed issues that showed that there was enough information to state that the RQIA has been misinformed and that Mr and Mrs Wylie had obstructed and misrepresented the information during the 2009 and 2011 inspections. This included Mr Wylie giving a direct answer in 2011, in the presence of Mrs Wylie, that he was no longer an appointee for one resident at the time of the inspections in 2011. Mr and Mrs Wylie were also receiving benefits following the inspection in 2011 but both told us directly that Mr Wylie was no longer the appointee."*

The panel took account of Mr 16's RQIA Finance Report on Hebron House and Bawn Cottage, dated 30 January 2014. Under the heading "Appointeeship" the report stated that on the 7 and 8 of December 2011 in the presence of Mr 6, Mr and Mrs Wylie were asked if Mr Wylie held appointeeship for any resident. Mr Wylie stated that since the financial inspection on the 9 and 27 February 2009, he had relinquished appointeeship for all residents.

The report further stated that the Trust was informed by Mr Wylie on the 28 August 2012 that he had relinquished appointeeship for three residents at Hebron house in 2009. However, the Trust confirmed that Mr Wylie retained appointeeship for Resident W until the time that the Trust published its first report in October 2012. This was contrary to what RQIA was told during the December 2011 inspection.

The panel noted that the report also stated that Mr Wylie produced a letter, dated 18 June 2009, which stated:

> *"I wish to relinquish my role as Disability Living Allowance appointee for the following people who live at Hebron House…"*

The panel had sight of the letter and noted that there was no evidence to show that it had actually been sent as it did not contain a name or address of the proposed recipient.

Ms 10 in her witness statement stated:

> *"The Trust took the view that Mr Wylie being an appointee was a conflict of interest and that the appointee should be a family or the Trust. The Trust asked Mr Wylie to relinquish appointee-ship and where the family was unable to do so, the Trust would be responsible for the appointee-ship. The Trust found out that Mr Wylie had retained appointees-hip for two individuals , both of whom had significant assets. As the appointee, Mr Wylie could charge the residents for transport and supervision and then authorise the release of money to himself. Mr Wylie kept the appointee-ship for those two individuals for at least two years after he was asked to relinquish it"*

The panel took account of the notes of a meeting held between Trust representatives and Mr and Mrs Wylie held on the 1 November 2012. The purpose of the meeting was to share the Investigation Report into potential financial abuse at Hebron House and Bawn Cottage. Under the heading of appointeeship it stated:

"[Ms 15] informed the meeting that [Mr 13] had given an instruction in 2009 that no proprietor should hold appointeeship for residents. As part of the investigation, it came to light that Norman Wylie still holds appointeeship for Resident W. Norman Wylie stated that he was not aware that he still appointeeship. He said that [Ms 25] had typed the letters to cease appointeeship and that he signed them and therefore felt all was sorted.

[Ms 15] stated that bank statements show this money coming into Hebron House account and that surely Norman Wylie would be aware of this."[sic]

The panel had access to an extract from a Hebron House Bank statement which showed that payments from the Social Security Agency in the name of Resident W were being paid into the bank account in June 2011. This was evidence that Mr Wylie had continued to be the appointee for Resident W sometime after he claimed to have relinquished appointeeship.

Mr Wylie in his written submissions stated that he was advised by the care manager not to forward the letter of resignation as appointee to Social Services because the care manager wanted to handle this herself. Mr Wylie in his written submissions stated:

"…he does not know what happened within Care Management to his letter, but payments were stopped for all three residents, so he assumed Care Management had fulfilled their obligations to notify Social Security accordingly."

However, the panel was mindful that this amounted to hearsay. The care manager had not attended to give evidence at this hearing or provided a formal witness statement. As a result, there was no way to test the veracity of this claim and there was no corroborating evidence.

Mrs Wylie should have been aware that no one should remain as appointee because all homes had been written to in 2009 giving an instruction that no proprietor should hold appointeeships for residents. The panel determined that Mrs Wylie would have known about this as the letter would have been addressed to her as the Registered Manager.

In response to the charge Mr Wylie provided a written submissions on Mrs Wylie's behalf, which was also read out by Mr Wylie, which stated:

> *"Mrs Wylie did not allow Mr Wylie to remain the appointee for Resident W as Mrs Wylie was not in position of authority over Mr Wylie but rather the reverse as Mr Wylie was Managing Director and the responsible person in charge of Finance and Estates.*
>
> *Mr Wylie relinquished his role for this resident, along with two other residents from Craigavon and Banbridge on letter dated 18th June 2009 and collected from Home by Care manager as were other letters from Armagh and Dungannon unit. Mr Wylie does not know what happened within Care Management to his letter, but payments were stopped for all three residents, so he assumed Care Management had fulfilled their obligations to notify Social Security accordingly…*
>
> *Neither Mr Wylie nor Mrs Wylie were aware that Mr Wylie remained appointee and never received any communication to confirm same."*

In light of the above, the panel determined that Mrs Wylie, as the Registered Manager, should have taken the necessary action to ensure that Mr Wylie was no longer an appointee for Resident W and therefore should not have been receiving funding from the Social Security Agency on behalf of Resident W.

The panel therefore finds this charge proved.

Charge 14

14. On various dates between 2008 and 2013, inappropriately charged one or more residents for holiday costs as set out in Schedule G.

Date	Destination	Charge to resident (as deducted from cashbook)	Hotel Charge	No. Residents	Total charged for accommodation per resident	Total charged for staff supervision per resident	Charge for transport per resident	Total cost per resident
15 to 17 May 2012	Portballintrae	£300	£145 per person, including two dinners, two breakfasts and a lunch	16 – I, P, L, Z, K, O, E, J, R, Y, X, F, W, T, AA, U	£203.75	£232.57	£207.60	£643.92
23 to 25 April 2012	Newcastle	£300 (9 residents) £400 (2 residents, incl. G)	£110.90	11 – H, D, AH, Q, L, S, N, M, AC, B, AB	£110.90	£154.54	£100.00	£365.44
18 to 19 June 2011	Carlow (Ireland)	£446	£62.61	1 - L	£290.28 (including meals for staff as well)	£337.50	£232.20	£859.98

This charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 3, Mr 5, Mr 16 and the evidence of Mrs Wylie.

At a meeting on the 1 November 2012 to discuss the Trust's investigation report representatives from the Trust met Mr and Mrs Wylie. Holidays was one of the issues discussed.

> *"Ms 15 informed the meeting that there was not sufficient evidence available to review localised holidays for residents. When the investigation team visited Hebron House on the 1 May 2012 Mildred Wylie had made a list of residents who had gone on holiday for the past few years from memory. There was no record of staff who attended or evidence that the holidays were agreed with the Trust. Norman Wylie said that residents are charged £300 each for accommodation, meals and staffing...*
>
> *…Mildred Wylie said the holidays were discussed and agreed at this year's care management reviews. Mildred Wylie stated that additional staff attended the holidays as the staff complement in the home always remains the same even when a large number of residents are on holiday.*

The panel noted Mr 16's RQIA's Finance Report on Hebron House and Bawn Cottage dated the 30 January 2014. In a section entitled Holiday Approvals/ Agreements the following was stated:

> *"The second Trust safeguarding vulnerable adults report stated that residents' family members, representatives and officers from the Trust were not involved in discussions prior to holidays being agreed. They were also not informed of the full cost of the holidays. RQIA had identified this as a deficiency within the homes procedures and had made requirements regarding this issue."*

The need to keep records relating to the full costs of holidays was raised in the report and QIP following the financial inspections of Hebron House on 9 and 27 February 2009. The need to agree arrangements for staff accompanying residents, including holidays, was raised in the report and QIPs were inadequate and unsatisfactory. Information from the Trust would indicate that they have not compiled with the requirements. RQIA would conclude that as Mr and Mrs Wylie failed to maintain records regarding holiday charges. Mr and Mrs Wylie remain in breach of Regulation 19 (2) of The Residential Care Homes Regulations (Northern Ireland) 2005 and furthermore this is a breach of Article 40 (1) of The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. This is an offence under Article 42 of the same Order."

In the conclusion to the report, the RQIA stated that the report had identified a number of breaches of the Residential Care Homes Regulations (Northern Ireland) 2005. The breaches related primarily to the failure, on the part of Mr and Mrs Wylie, to provide relevant financial documents and records relating to, amongst other things, charges to residents for holidays.

The panel considered holidays to three separate destinations taken by either one or more residents. The first holiday to Portballintrae, Co Antrim took place between the 15 and 17 May 2012, the second to Newcastle, Co Down took place between the 23 and 25 April 2012 and finally there was an overnight trip to Carlow in the Republic of Ireland which took place between the 18 and 19 June 2011.

In respect of the holiday to Portballintrae Mr 3 in his witness statement stated:

"One particular example of residents' holidays was to Bayview Hotel, Portballintrae in 2011 and 2012. In May 2012 sixteen residents attended with six staff, including Mrs Wylie…A sum of £300.00 was withdrawn from each residents' personal cash books for accommodation, meals and care for two nights stay. Hebron House and

Bawn Cottage provided a breakdown of the holiday costs as £3,260.00, which when divided amongst sixteen residents equals £203.75 each.

Even if it is accepted that residents pay for staff accommodation in full, there is still a deficit of £96.25 per resident. There were no individual receipts for the residents during the holiday…The Team Managers were Mr and Mrs Wylie. Mr Wylie is not employed as a Manager in either Hebron House or Bawn Cottage and therefore his £20.00 per hour salary and £40.00 per night is inappropriate and should not be included.

Costs for holidays must also reflect the fact that the residents already pay for 24 hour care and take account of potential reductions in staffing levels in Hebron House and Bawn Cottage when the residents were on holiday. The average costs were worked out as 346 miles at £0.60 per mile totalling £207.60 and for all sixteen residents, it was £3,321.60. The investigation team found that if the mileage costs had been split evenly across all residents it would have been significantly reduced…The residents had been charged individually for the journey, which was inappropriate."

Mr 3 confirmed, in his oral evidence that a number of holidays were taken.

Overall, the costs levied for the holiday in Portballintrae for each of the 16 residents who attended amounted to £643.92. This comprised of accommodation costs £203.75, supervision costs of £232.57, and transport costs of £207.60. Mr Hayward in his submissions explained persuasively how these figures were arrived at:

"…in relation to the holiday to Portballintrae. The hotel charge was £145 per person. Now, there are 16 residents, but there is also 6 staff, so there would have been 22 people. What isn't included in that box under the hotel charge is that there's a single room supplement of £35, and that would have been levied twice because there are two nights. So there's a total single room supplement of £70.

So that brings me to that fourth column, total charge for accommodation per resident, one arrives at that number by multiplying 145 by 22, by adding £70 for that single room supplement and by dividing the total by 16...

Now, the following column, the total charge for staff supervision per resident, that, I think, must come from the breakdown of the Portballintrae holiday cost provided by Mrs Wylie. That's at page 132 of her statement. The fourth section, there's two lines for staffing costs. So, the total staffing costs for senior staff was £1,941. Total staffing costs for the two management was £1,780. If one adds those two figures together and divides the total by 16, one arrives at £232.57. In the next column, the charge for transport per resident, that is in paragraph 102 of Mr Hayward's statement, where he says, "The average costs were worked out as 246 miles, at 60 pence per mile, totalling £207.60 for all 16 residents".

The financial arrangements for the holiday to Newcastle, Co Down between the 23 April and 25 April were broadly similar. Overall, the costs levied for the holiday in Newcastle for each of the 11 residents who attended amounted to £365.44. This comprised of accommodation costs £110.90, supervision costs of £154.54, and transport costs of £100. Mr 3 in his witness statement outlined details of the trip to Newcastle and how it was funded:

"Each resident withdrew £300.00 from their personal account for the holiday. Two residents, including Resident G, withdrew £400.00. Mrs Wylie explained that they required extra supervision which was an extra cost…

When looking at the AA route planner the return journey was 72 miles. Mr Wylie was the bus driver and stated he returned to Market Hill each evening and the bus was used to take the residents on trips during the day. The investigation team disputed why Mr Wylie was required to drive the bus given that other staff, including Mrs Wylie, was insured to drive the vehicle to Newcastle. The investigation team found that any costs associated with Mr Wylie should be limited to the cost of the

driver and not an hourly management rate of £20.00 per hour. The total estimated travel time for the three journeys is 7.5 hours, whereas Mr Wylie charged for 40.5 hours at £20.00 an hour."

With regards to the Newcastle trip, the panel noted that Mr Wylie drove the bus back to Markethill every night which inflated the transport costs for the residents and a charge for 40.5 hours of driving. However, no suitable reason has been provided as to why this had to be done.

Mr Hayward in his submissions explained persuasively how the figures above for each individual were calculated:

"Now, the Newcastle charge, the hotel charge is also the same total, as in the total charge for accommodation per resident. Figures for that are the invoices for that holiday…There's actually two invoices,…the total is £596.00…there's a type-written total of £681, but that's crossed out and a handwritten note total of £624. When one adds £624 to £596, and divides that by 11, which are the number of residents on the holiday, one arrives at a total of £110.90, actually. So, it should be rounded up to 91 pence. That's where that figure of £110.90 comes from...

The total charged for staff supervision per resident for Newcastle, the breakdown of holiday costs provided by Mrs Wylie...I think whoever drafted the schedule misread this breakdown. So, if members of the panel look at that page in particular because it will be easier to follow along visually. Under the staffing costs, there's actually three lines for the staffing costs. There's four senior staff at £10.50 per hour. The total for that, instead of being in the right-hand column is the line underneath, £1,941. Then there's one management at £20 per hour, plus £40 per night, with a total of £890, and one management at £20 per hour for a total of £810. Now, I think what's happened here is that £890 plus £810 have been added together. Just to check, I'm going to do that as I speak. That is a total of £1,700, which when divided by 11 produces £154.54. In fact, that should be rounded up to 55 pence. So I think

that's where that figure comes from. Now, I don't think, when I said I think there's been a misreading by whoever drafted this, it's because they've omitted, or apparently omitted, that figure of £1,941 for the four senior staff because that figure isn't in the right-hand column. So, if the three total staffing costs were added together, so that's £1941, plus £890, plus £810, and that total is divided by 11, then one has a total, per resident cost, of £331.

In respect of the £100 charge for transport for residents, the only case I've been able to identify that figure is within Mrs Wylie's written statement…, where she says, "The transport cost was limited to £100 per resident".”

One resident accompanied Mrs Wylie and another member of staff on an overnight trip to Carlow in the Republic of Ireland on the 18 and 19 June 2011. Overall, the costs levied for the holiday in Carlow for one resident amounted to £859.98. This comprised of accommodation costs of £290.28, supervision costs of £337.50, and transport costs of £232.20. Mr 3 in his witness statement outlined details of the trip to Carlow:

“Resident L was a resident in Bawn Cottage. Between 18 and 19 June 2011, Resident L visited Carlow, Ireland, with Mrs Wylie and Mrs Wylie's sister…[who] was recorded as a senior care assistant. Resident L's personal cash sheet showed that on 18 June 2011, she withdrew a sum of £50.00 and on 21 June 2011, the sum of £396.00 was withdrawn…From the log sheet, the mileage to Carlow was 387 miles charged at £0.60 per mile and requiring 30 hours of supervision at £11.25 per hour.

The investigation team discussed the holiday with Mrs Wylie on 6 February 2013 as there were concerns about the high costs. Mrs Wylie informed the investigation team that the destination was chosen because it was the "next stop past Dublin". Mrs Wylie stated that, "this was a unique holiday and won't be happening again". Mrs Wylie did not explain why the holiday would not be happening again. The

investigation team was told that the holiday and total costs were fully discussed and agreed with Resident L prior to going."

When Mrs Wylie was asked about two members of staff in relation to supervision, Mrs Wylie stated that was her discretion as the Manager. Resident L had requested both Mrs Wylie and the other member of staff accompany her. When we examined staff rota at Hebron House and Bawn Cottage between 18 and 19 June 2011, we noted that both members of staff were on call within the respective rotas.Mrs Wylie and the other member of staff were unable to clarify on call arrangements or address other concerns such as staffing levels, senior staff charges, supervision costs, residents paying for staff meals and accommodation costs….Mrs Wylie as the Registered Manager, should have been able to address these concerns. Further discussion with Resident L showed that she was oblivious to the total cost of the holiday and unaware she has incurred staff costs, including their accommodation and meals."

With regards to the Carlow trip, the panel had no information before it to demonstrate why Mrs Wylie, who was the Registered Manager, and her sister had to attend a trip pertaining to the care of one resident, namely Resident L. It bore in mind that this was asked during the initial investigation and Mrs Wylie stated that this was her discretion as the manager.

Mr Hayward in his submissions explained persuasively how the figures above for each individual were calculated:

"That brings us then to Carlow…the total charge for staff supervision for resident and for transport for resident in relation to Carlow...These are the transport spreadsheets that I had occasion to take the panel through in some detail, in relation to the transport supervision charges. There is a line for 18 and 19 June 2011, for Resident L for Carlow. The total charge for supervision is £337.50. The total charge for transport is £232.20."

Mr 5, who was a witness for Mrs Wylie, stated in his oral evidence that there was a lack of complete records in relation to holidays. He also stated that the amounts were not charged correctly and the amounts that were incorrectly charged were repaid.

Mrs Wylie in her written response commented as follows, in respect of holiday charges:

> *"As well as providing excellent care, holidays was very much part of their lifestyle as they never received the opportunity to go on holiday in the institution. This was over and above what Mr and Mrs Wylie were expected to do as this was not in contract. Residents couldn't really afford the full price of the holiday and Mr Wylie kindly subsidised the group holidays to ensure <u>every</u> resident availed of a holiday. At the 'residents meeting' the residents chose where they would like to go eg North coast, Newcastle"*
>
> *RQIA did not allow us to reduce the staffing levels in the homes even though there were fewer residents to look after, so all the staff going on holiday with the residents were additional that had to be paid the whole time from they left the homes til they returned*
>
> *No resident was charged inappropriately, and Mrs Wylie had nothing to do with holiday costs or payment of them. This was carried out by resident's finance manager."*

The panel was of the view that charges levied to each resident should have been based on the actual cost of the holiday only and not on some arbitrary figures produced after the event. It noted that there appeared to be a lack of proper record keeping by Mrs Wylie in respect of holidays. There were examples of residents being charged excessive transport and supervision costs.

No effective explanation was offered as to why different charges were levied to the individual residents or why some residents were charged a higher fee than others. The

panel determined that the costs did not appear to be reduced when there were fewer residents to be supervised. Excessive charges for mileage were levied and residents appeared to be charged for Mr Wylie travelling back and forth to the Homes each night when there were no residents on the bus.

In conclusion it appeared to the panel that charges were levied on an ad-hoc basis. As a result, due to the arbitrary nature of the charges the panel was of view that they were inappropriate, excessive and lacked transparency.

The panel therefore found this charge proved.

Charge 15

Mr 16 in his written evidence explained that the Regulatory, Quality and Improvement Authority (RQIA) was an independent body responsible for monitoring and inspecting compliance with the regulations of care homes in Northern Ireland. Mr 16's evidence set out clearly what was expected of Mrs Wylie in her capacity as a Registered Care Home Manager.

> *"As the registered Manager, Mildred Wylie was required to be fully aware of residential care home regulations. The DHSSPS have minimum standards for residential care homes dated 2008, which were updated in August 2011, and every registered manager must be fully aware of the requirements within that document. Every registered manager must be fully aware of their responsibility when they register themselves as the manager of services. Mrs Wylie was responsible for operational functions of Hebron House and Bawn Cottage. There are specific regulations in relation to financial arrangements to safeguard against potential financial abuse, such as there must be agreements in place between the service providers and the residents. As the registered manager, Mildred Wylie had to be aware of the financial arrangements within Hebron House and Bawn Cottage.*

When any meetings or enforcement are held the RQIA always encourage the registered manager to attend due to their overall responsibility".

When considering the stem of this charge, the panel noted the allegation that Mrs Wylie "failed to cooperate with the (RQIA) Finance Inspections". In considering the charge the Panel took account of the Residential Care Homes Regulations (Northern Ireland) 2005 and in particular paragraph 28 which deals with the financial position of homes. It states:

'(3) The registered person shall –
…
(c) supply a copy of the accounts to the Regulation and Improvement Authority at its request.'

The panel also noted that the 2011 Residential Care Homes Minimum Standards, issued by the Department of Health, Social Services and Public Safety (DHSSPS), also stated that there is an obligation on the Registered Manager to cooperate with the RQIA. It states:

"In addition, the Regulation and Quality Improvement Authority is assured through the registration process that the person: -

- *Has knowledge and understanding of his or her legal responsibilities.*
- *Intends to carry on the home in accordance with legislative requirements, DHSSPS Minimum Standards and other standards set by professional bodies and standard setting organisations".*

In light of the above, the panel was satisfied that Mrs Wylie was under a legal obligation to cooperate with the RQIA. The panel kept this requirement at the forefront of its mind as it considered the sub-charges of charge 15.

Charge 15a and 15e

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:
    a. Did not provide the required documentation;
    e. Failed to provide an explanation for supervision charges, despite being asked on four occasions between December 2011 and 3 August 2012.

These sub-charges are found proved.

The panel considered each of these sub-charges separately but as the evidence in relation to each is broadly similar in nature it dealt with them under one heading. In reaching its decisions, the panel took account of the evidence of Mr 16 and the evidence of Mrs Wylie.

Mr 16 in his witness statement stated:

> *"On 9 February 2009, we arrived at Hebron House and were met by Mrs Wylie. This was a routine inspection to ensure that Hebron House was compliant with the Residential Care Homes Regulations (Northern Ireland) 2005. We outlined the inspection and told Mrs Wylie what records we required to see as detailed in the notification letter and questionnaire sent to Hebron House prior to the inspection. Mrs Wylie told us that Mr Wylie was unavailable and, as she did not have any input into the management of the residents' finances, we would have to come back when Mr Wylie was available. Mrs Wylie only made available the resident's transactions books, which showed deposits and withdrawals of residents' personal monies…*
>
> *Following the inspections [in December 2011] Mr and Mrs Wylie returned the [Quality improvement Plan] with a comment stating that the additional money coming in for Resident T was part of the transport costs and should be going into the transport bank account. As previously stated, Mr Wylie showed us invoices sent*

to residents' representatives that had no reference to receiving DLA for mobility. However [Mr 3]…forwarded numerous invoices between July 2010 and July 2012, which clearly showed that the DLA mobility for Resident T was included on the invoices up to and including March 2011. Mr and Mrs Wylie did not inform us that this was happening. As a Registered manager, Mrs Wylie was responsible for complying with RQIA inspections and providing relevant information, which she failed to do…

During the inspection, Mr and Mrs Wylie explained that staff were brought in off duty to supervise on outings the majority of people brought in were Mr and Mrs Wylie's family members...I asked to see payments made to family members of £22.50 per hour and £11.50 per hour. Mr and Mrs Wylie refused to show the RQIA the records."

Mr 16 reiterated this in his oral evidence.

The panel also noted that Mr 16 in his witness statement stated:

"We asked for a breakdown of the supervision charges on four occasions in December 2011 and by letter on 17 April 2012, 4 July 2012 and 3 August 2012."

Following an inspection of Hebron House in December 2011, Mr and Mrs Wylie were provided with a quality improvement plan and asked to return it to RQIA once certain actions were completed. On 17 April 2012 RQIA wrote to Mr and Mrs Wylie asking for the return of information, previously requested, about supervision charges. When the information was not forthcoming the RQIA had to write again and again to the home requesting the same information. The panel noted that each letter asked for the same information namely a breakdown of the calculation used to charge residents for both the lower and higher rate of supervision. The panel noted that the RQIA requested the same information on 17 April 2012, 4 July 2012 and 3 August 2012.

The panel also took account of Mr 16's RQIA Inspection Report of Hebron House dated 7 December 2011. This stated:

> *"There was no record available detailing how the supervision costs were calculated in order to ascertain if a reasonable charge was being levied to the residents…a requirement is listed within the [Quality Improvement Plan] for a record to be retained of the breakdown used to calculate the supervision charge."*

The panel noted Mr 16's financial report on Hebron House and Bawn Cottage dated the 30 January 2014. It compared the findings of both safeguarding reports from the Trust and the findings from the RQIA finance inspections in 2009 and 2011. The report stated:

> *"…Mr and Mrs Wylie provided the Trust with significant financial information which had been withheld from RQIA inspectors during the inspection of Hebron House in February 2009 and the inspections of Hebron and Bawn Cottage in December 2011."*

The panel bore in mind that Mrs Wylie's defence throughout these proceedings has been that she did not have any knowledge of the homes' finances. However, it noted that, during the 2011 inspection, Mrs Wylie was present and responded to Mr 16's questions rather than deferring to Mr Wylie. Additionally, in Mr Wylie's closing submissions, the following was stated:

> *"Mrs Wylie did not fail to provide an explanation of supervision charges as she wouldn't have known what they were."*

However, the panel determined that Mrs Wylie as the Registered Manager would have had full knowledge of the levels of supervision that residents required and what they were being charged. The panel noted that Mrs Wylie had signed Resident W's contract (Terms and Conditions/ Residential Agreement) on 12 February 2012. The contract included

details of the supervision and transport costs and by signing the agreement Mrs Wylie was fully aware of the charges being levied.

The panel also determined that Mrs Wylie as the Registered Manager had a statutory responsibility, to comply with the requests for information from RQIA and to make this available in a timely manner.

The panel determined that Mrs Wylie failed to cooperate with RQIA inspections and did not provide the required documentation.

The panel also determined that Mrs Wylie failed to provide an explanation for supervision charges, despite being asked on four occasions between December 2011 and 3 August 2012.

The panel therefore found these sub-charges proved.

Charge 15b

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:
    b. Misled the Inspectors by saying that no additional payments were being received;

This sub-charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 16 and the evidence of Mrs Wylie.

Mr 16 in his witness statement stated:

"On 27 February 2009 I specifically asked Mr and Mrs Wylie if they were receiving any additional money for residents apart from the money that the trust paid for their placement. Mr and Mrs Wylie both said no…

On the 7 December 2011 I arrived at Hebron House to be met by Mr and Mrs Wylie and Mr 6 Due to the Trust's concerns they had raised at the meeting on 7 November 2011, we were aware that Mr and Mrs Wylie had previously withheld from us in February 2009, that a resident was paying an additional £461.00 per week, which was invoiced separately to the Office of Care and Protection. Mr and Mrs Wylie were also receiving £363.00 a week for another resident on top of the money paid by the trust for their placement."

Mr 16 reiterated this in his oral evidence. He stated that he had spoken to both Mr and Mrs Wylie at the time and they both denied that they were receiving any additional money.

The panel bore in mind that Mrs Wylie's defence throughout these proceedings was that she did not have any knowledge of the finances relating to the homes. However, it noted that, during the inspection in December 2011, Mrs Wylie was present and had responded to Mr 16's questions rather than deferring to Mr Wylie.

The panel took account of Mr 16's file note dated the 15 December 2011 relating to the Hebron House RQIA inspection. It stated:

"During the two days of inspections Mr Wylie was asked on a number of occasions if he received additional monies for any residents over and above the agreed trust rate. Mr Wylie stated that he didn't and due to this response no agreements were requested for [Resident U and Resident T]

During feedback the inspectors asked once again if any additional monies were received for which Mr Wylie stated "only for the two residents at Hebron. Mr Wylie

stated that he thought all previous questions concerning additional monies was in relation to Bawn Cottage

…Mr Wylie stated that the current arrangements for the two residents were agreed a number of years ago by the trusts. Mr Wylie also stated that no agreements were in place as [Mr 5] had informed him that as the arrangements were in place for over three years then no agreements were required"

Mr 16 in his witness statement stated:

"After the inspection, I telephoned Hebron House and spoke to Mr Wylie and asked him to confirm again that no agreements were in place for the two residents in question, Resident U and Resident T. Mr Wylie said he did not have agreements for the two residents. Mrs Wylie subsequently emailed an agreement for Resident T but stated that they did not have an agreement for Resident U as they were not receiving additional payments. As the Registered Manager, Mrs Wylie would have been aware that she was required to have an agreement in place for each resident. When the Police Service of Northern Ireland (PSNI) seized records in Hebron House and Bawn Cottage, they came across an agreement for Resident U that Mr and Mrs Wylie said they did not have one for, dated 9 November 2006"

The panel noted that the issue of additional payments was highlighted in Mr 16's briefing notes in "Financial Inspection of Hebron House & Bawn Cottage in December 2011"*.*

Mrs Wylie's response to this charge was that she did not have any responsibility for finance at the Homes.

The panel determined that there was sufficient evidence to show that Mr and Mrs Wylie did not provide the RQIA with the necessary information on additional charging to enable it to effectively complete its inspection of the homes. The evidence of Mr 16 in relation to additional charging was clearly documented. In light of the above the panel determined

that Mr and Mrs Wylie misled the Inspectors by saying that no additional payments were being received when in fact they were.

The panel therefore found this sub-charge proved.

Charge 15c

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:
    c. Failed to provide signed agreements for Resident T and Resident U when asked;

This sub-charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 16 and the evidence of Mrs Wylie.

> *"During the feedback at the end of the inspections in 2011, I asked once again if any additional monies were received and Mr Wylie stated 'only for the two residents at Hebron'. Mr Wylie stated that he thought all previous questions were in relation to residents at Bawn Cottage… The two residents, Resident U and Resident T, were not mentioned in the original inspection in 2009. I therefore asked for evidence of agreements in place for the additional monies. Mr and Mrs Wylie stated that no agreements were in place…*

Mr 16 reiterated this in his oral evidence. In response to a question on whether Mrs Wylie was specifically asked about the agreements he responded "Mr and Mrs Wylie were both asked for the agreements during feedback and during the actual inspection"

The panel bore in mind that Mrs Wylie's defence throughout these proceedings was that she did not have any knowledge of the homes' finances. However, it noted that, during the

inspection in December 2011, Mrs Wylie was present and had responded to questions from Mr16 rather than deferring to Mr Wylie.

The panel took account of Mr 16's RQIA's Inspection Report of Hebron House dated 7 December 2011. This stated:

> *"The inspectors were further informed that no agreements were in place with the two residents."*

However, Mr 16 in his witness statement stated:

> *"After the inspection … Mrs Wylie subsequently emailed an agreement for Resident T but stated they did not have an agreement for resident U…When the PSNI seized records in Hebron House and Bawn Cottage, they came across an agreement for Resident U… dated 09 November 2006."*

The panel also took account of the briefing note produced by Mr 16 on the 15 December 2011 following his December 2011 inspection of Hebron House and Bawn Cottage. As referenced in respect of Charge 15(b) above this note highlighted the fact that additional payments were made in respect of some residents but there were no agreements in place. In light of the above the panel determined Mrs Wylie failed to provide signed agreements for Resident T and Resident U when asked.

The panel therefore found this sub-charge proved.

Charge 15d

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:
    d. Refused to allow the Inspectors sight of the business bank account statements for Hebron House;

This sub-charge is found proved.

In reaching this decision, the panel took account of the written evidence of Mr 16 and the evidence of Mrs Wylie.

> *"Regulation 22 of the Residential care Homes regulation (Northern Ireland) 2005 states that the Registered Person shall not pay money belonging to any residents into a bank account unless the account is not used by the Registered Person in connection with the carrying on or management of the residential care home…*
>
> *Mrs Wylie also refused to show the bank statements despite being the registered Manager and therefore, responsible for all operational running of Hebron House and Bawn Cottage. Neither Mr, nor Mrs Wylie, gave reasons for the refusal to show bank statements.*
>
> *Mr and Mrs Wylie refused to show the RQIA the records. The RQIA does not have the power to look at the money in the business bank account. However, if the money was belonging to residents or charged to residents for services then we had a right to ask. As Mr and Mrs Wylie refused to show us the bank accounts,…"*

Mr 16 reiterated this in his oral evidence. He also stated that Mr and Mrs Wylie were sitting together when he asked them if he could access the business bank account statements for Hebron House. He stated that Mrs Wylie did not offer access to the bank account.

The panel bore in mind that Mrs Wylie's defence throughout these proceedings was that she did not have any knowledge of the homes' finances. Mrs Wylie in her written response to the charge stated:

> *"Mrs Wylie did not refuse to show [Mr 16] bank statements.*

Mrs Wylie never seen any homes bank statements and to this day never seen any bank statements, so she would not have been in a position to show them to him."

Mrs Wylie further added:

"Mrs Wylie had no involvement in finance neither had any responsibility concerning it. This was Mr Wylie's responsibility."

However, it noted that, during the inspection in December 2011, Mrs Wylie was present and responded to questions raised by Mr 16 and did not defer to Mr Wylie.

The panel took account of Mr 16's financial report, dated 30 January 2014, which compared the findings of both safeguarding reports from the Trust and the findings from the RQIA finance inspections in 2009 and 2011. It stated:

"The SHSCT has provided RQIA with a copy of a bank statement which was not disclosed to RQIA inspectors when requested during the December 2011. This statement shows social security benefits for a resident [Resident W] being directly deposited into an account named Hebron Residents Account on 5 December 2011…This was two days before the RQIA inspection of 7 December 2011. This information should have been shared with RQIA during their inspection of December 2011."

The panel preferred the evidence of Mr 16 and therefore determined that Mrs Wylie, in February 2009 and December 2011 refused to allow the Inspectors sight of the business bank account statements for Hebron House.

The panel therefore finds this sub-charge proved.

Charge 15f

15. In February 2009 and December 2011, failed to cooperate with the RQIA Finance Inspections at Hebron House and Bawn Cottage, in that you:
    f. Misled the Inspectors by informing them that holidays took place mainly in Northern Ireland and Ireland and that there was no further documentation in relation to holidays than was provided.

This sub-charge is found proved.

In reaching this decision, the panel took account of the evidence of Mr 16, Ms 10 and the evidence of Mrs Wylie.

In his witness statement Mr 16 stated:

> *"During the inspections in 2011, we asked about the residents being taken on holiday, we expected there to be clear records for the expenditure of residents. It is the responsibility of the Registered Manager to keep records of holidays to check the costs. Mr and Mrs Wylie handed the file of holiday documentation to the RQIA and stated that holidays were mainly taken in Northern Ireland or Ireland. Mr16 asked Mr and Mrs Wylie if there were any other holidays apart from the holidays in that file and Mr Wylie stated in the presence of Mrs Wylie, "no". We looked at the holiday file records and could not find an audit trail in relation to how the holiday was agreed with the care manager. As the Registered Manager and Responsible Person, Mrs Wylie was responsible for ensuring that residents had chosen where they wanted to go and been charged the correct cost…. We did not ask for additional holidays because Mr and Mrs Wylie told us that there were no further holidays. When we reviewed the Trust reports there were further holidays abroad from Turkey and Israel to Amsterdam in four-star hotels. Money had been released by by OCP unbeknown to the Trust. Mr and Mrs Wylie or Mrs Wylie and her relative went on the holiday with the residents. There were no records of this financial*

information. One resident was taken to Wales… This therefore shows that Mr and Mrs Wylie intentionally and deliberately withheld information when we asked if there were any other holidays."

Mr 16 reiterated this in his oral evidence. He stated that Mr Wylie or Mrs Wylie, answered "no" to a direct question as to whether there were further holidays taken outside of Ireland and Northern Ireland.

Ms 10 in her oral evidence commented as follows:

" I have no difficulty with the individual going on holiday, because I think that's something that you would aspire for all our clients to be able to do. I had reservations about the holidays Resident U went on, because they were all foreign, holidays and not wishing to come across as disparaging to the individual involved, I'm not sure he would necessarily have had the capacity to understand the difference between being in Manchester or Marbella, but they were always expensive holidays. He didn't go on holiday with the other residents, which I would have thought he might have had actually a much more enjoyable time. They were always single holidays- him on his own with generally Mr and Mrs Wylie and it an all expenses paid holiday for them."

The panel noted that Resident U's personal profile suggested that he had numerous local and overseas holidays dating back to 1990, costing £51,000. While the files provided show a list of destinations and cost there are no records of supervision, receipts or discussion in relation to the holiday at meetings with the Trust.

The panel also noted that Resident U's holiday payments included holidays to Malta, Torquay, Jersey, Poland, Slovenia, Israel, Bulgaria, Prague and Holland.

Mrs Wylie's defence throughout these proceedings was that she did not have any knowledge of the finances of the homes. However, the panel noted that, during the RQIA

inspection in December 2011 Mrs Wylie was present and responded to questions from Mr 16's and did not defer to Mr Wylie. In his written closing submissions, Mr Wylie stated that the allegation was untrue and that Mr 16 was not a credible witness. Ms 22 in her witness statement said:

> *"I do not recall Mr Wylie being asked for location of holidays never mind him making a comment that they mainly took place in N Ireland. [Mr 16] did not ask either me or Mr Wylie for any further documents from the folder"*

The panel determined that as the Registered Manager, Mrs Wylie had a statutory duty to comply with requests for information from the RQIA and that all relevant documentation should have been provided.

The panel therefore found this sub-charge proved.

The hearing resumed on 10 April 2024. Mrs Wylie was not in attendance, however she was now represented by Simon Holborn of NMCWatch.

The panel was provided with an email from NMCWatch to the NMC dated 9 April 2024 in which it was stated that Mrs Wylie had instructed NMCWatch. Mr Holborn relied on Rule 20 of the Rules 2004 which provides:

> ***'20.***
> *(1) The presenter and the registrant shall be entitled to be heard by the Committee.*
>
> *(2) The registrant may be represented by*
> *(a) solicitor or Counsel;*
> *(b) a representative from her professional body or trade union; or*
> *(c) subject to paragraph (4), <u>any other person</u>.*
>
> *(3) Where the registrant is not represented, she may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without its permission.*
>
> *(4) A person who represents or accompanies the registrant shall not be called as a witness at the hearing.*
>
> *(5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.'*

Decision and reasons on application for an adjournment

The panel heard an application from Mr Holborn to adjourn this hearing. He submitted that this was so he could appraise himself of the facts and prepare himself and Mrs Wylie for the next stage of the hearing, namely misconduct and if applicable current impairment.

Mr Holborn submitted that he had only recently been instructed by Mrs Wylie. He submitted that he had read the determination and needed more time to prepare his case for the next stage. This included, reading the other material at the fact finding stage which is relevant to the next stage, obtaining witness statements, references and testimonials. He submitted that he understood the inconvenience an adjournment would cause. He submitted that it would be fair and right to allow Mrs Wylie to be advised and supported. He submitted that he is committed to helping Mrs Wylie to engage with the process.

Mr Holborn submitted that the greater inconvenience would to Mrs Wylie if she were not allowed to prepare properly. He invited the panel to adjourn the hearing.

The panel referred Mr Holborn to an email dated 9 April 2024 from Mr Holborn to the NMC case officer. The email stated that Mrs Wylie would be attending today's hearing upon receipt of the Microsoft Teams Link. The panel asked if it could be reassured that Mrs Wylie would attend the hearing in the future.

Mr Holborn submitted that there was no intention for Mrs Wylie to attend today. He informed the panel that Mrs Wylie had found the NMC process distressing and had decided to leave this matter to Mr Holborn and NMCWatch. He submitted that he would do his best to ensure Mrs Wylie's attendance. He also confirmed that Mrs Wylie had stated her intention to attend the hearing in the future.

Mr Holborn responded to questions from the panel.

Mr Holborn informed the panel that he was aware of Mrs Wylie's limitation with IT and the fact that [PRIVATE] was another reason as to why she could not attend this hearing virtually. He submitted that NMCWatch have experience in this area of IT and informed the panel that they will do IT "trial runs" with Mrs Wylie to ensure that can participate virtually. hea

Mr Holborn submitted that Mr Wylie may be in attendance in the future but will not be representing Mrs Wylie. He submitted that Mr Wylie was content with NMCWatch's involvement with the hearing.

Mr Holborn submitted that he had yet to decide if Mr Wylie would be a witness for stage 2, bearing in mind Mr Wylie has represented Mrs Wylie during the facts stage of this hearing. Mr Hayward submitted that he would need to seek instructions regarding this issue.

Mr Holborn confirmed that he understood that the panel were now dealing with misconduct and, if required, current impairment and would not revisit the facts of this case. He also informed the panel that an adjournment of weeks rather than days was required.

Mr Hayward submitted that the NMC's position on this application is neutral and would leave the matter to the panel.

The panel accepted the advice of the legal assessor. Rule 32 of the Rules states:

> *'**32.**— (4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to—*
>
> *(a) the public interest in the expeditious disposal of the case;*
>
> *(b) the potential inconvenience caused to a party or any witnesses to be called by that party; and*
>
> *(c) fairness to the registrant.*

Panel decision

In all of the circumstances outlined today, the panel is open to give serious consideration to granting an application made today on behalf of Mrs Wylie by Mr Holborn. However, the panel considered that it was not in a position to come to a considered view at this point. The panel decided that it was necessary to invite Mr Holborn to consider whether he has instructions to agree to a number of matters that would assist the Panel in coming to a view on adjournment.

The panel recognised that fairness to Mrs Wylie is a prominent and highly material consideration in an application to adjourn.

The panel considered that in order to support its decision making on an adjournment application, the panel would wish to see a statement by Mrs Wylie in which she acknowledges that her representations and participation going forward is confined to issues relevant to stage 2. That would not impede Mrs Wylie from exploring any other matters separately and outside of stage 2. Additionally, it would not limit or prejudice any rights that she may wish to exercise more generally. These are not issues for the panel. The statement would be expected to be a commitment to the process and effective participation in stage 2.

The panel would also be assisted by having Mrs Wylie's acknowledgement and Mr Holborn's agreement to be bound to report on incremental progress towards stage 2. This should include a timetable for witness statements and testimonials, if any being prepared, with these being shared in advance of the resumed hearing if an adjournment is granted.

The panel would also wish to be satisfied regarding the proper venue for stage 2. Mrs Wylie has in the past explained that [PRIVATE], she was unable to participate effectively in a remote hearing. For that reason, the hearing has been conducted in person in Belfast in order to facilitate that. Mr Holborn has suggested today that it would now be possible to proceed remotely because, with the 'right equipment' a remote hearing was possible. The

panel would wish to be reassured that any technology proposed had been tested and found to be satisfactory prior to the resumption at stage 2. Alternatively, a venue in Belfast could be arranged and hybrid arrangements made for anyone unable to attend such as a witness.

Mr Holborn informed the panel that he would obtain the statement from Mrs Wylie.

Decision and reasons on application for an adjournment (continued)

The hearing resumed on 11 April 2024.

The panel had sight of a statement from Mrs Wylie, dated 10 April 2024, which stated:

> *'1. I acknowledge the panel's request for assurance that I will actively participate in stage 2 proceedings and will not use it as an avenue to revisit the facts already established in stage 1.*
>
> *2. I want to express my full willingness to comply with the panel's request. I understand the importance of stage 2 in addressing any concerns related to impairment and misconduct, and I am committed to engaging constructively in this phase of the process.*
>
> *3. Regarding the panel's concern about revisiting proven facts, I assure the panel that while I will actively participate in stage 2 discussions, I do not intend to contest or revisit facts that have already been established in stage 1. My focus will be on addressing any issues related to impairment and misconduct in a forward looking and constructive manner.*
>
> *4. I trust that this statement adequately addresses the panel's concerns and demonstrates my commitment to engaging with the process in a manner that is fair and respectful to all parties involved.*

In light of the above, the panel considered Mr Holborn's application to adjourn and bore in mind the Rule 32. The panel noted that the charges are serious and was satisfied that there is a strong public interest in the expeditious disposal of this case.

With regards to potential inconvenience to witnesses, the panel bore in mind that it had already heard from the NMC witnesses and Mrs Wylie's witnesses during the facts stage. Therefore, there would be no inconvenience to witnesses were the adjournment granted.

The panel then moved onto the issue of fairness to Mrs Wylie. It carefully considered the submissions of Mr Holborn and bore in mind that the NMC are neutral in regard to this application.

The panel took account of the fact that Mrs Wylie has re-engaged with the NMC process with representation from NMCWatch to assist with the next stage of this hearing. As a result, the panel considered that it would be fair to Mrs Wylie to allow her representative time to prepare her and themselves for the next stage of this hearing.

Therefore, the panel determined that, having regard to its duty to ensure the fairness of proceeding throughout, it was satisfied that in the particular circumstances it was fair and in the interests of justice to adjourn this hearing pursuant to Rule 32.

The hearing will resume on 10 May 2024 where Mr Holborn would address the panel on the following case management matters which should be resolved, with the parties agreed consent. This should include:

- Mrs Wylie's attendance, virtually if possible, on the days required.

- Attendance of all parties on 10 May 2024, virtually if possible;

- An agreed timetable for disclosure and the service of any documents the NMC or Mrs Wylie would rely on;

- An update on the anticipated length of the hearing including any witnesses to be called and how they will be giving evidence;

- An agreed statement of facts, if required, including reflections, testimonials etc in relation to stage 2 of the hearing;

- Clarification on whether Mr Wylie intends to provide evidence, a witness statement and, for Mr Holborn to be prepared with submissions speaking to why Mr Wylie is eligible to give evidence at this stage;

- Consideration to be given to the venue. If the hearing is to be hybrid virtual or in person, then the panel would require assurances from Mr Holborn that they have fully tested virtual meetings with Mrs Wylie and, if possible, someone from the NMC so that the panel can be satisfied that no difficulties will arise later on;

- An update on any IT issues, as applicable;

- [PRIVATE].

Decision and reasons for directions made

On 10 May 2024, the hearing resumed for updates regarding the case management points detailed above.

Mr Holborn addressed each point on Mrs Wylie's behalf. In summary he explained that it has only been a month since the NMCWatch commenced representation and whilst progress is being made, he would still require more time to fully catch up and solidify the position in respect of each point. When asked, Mr Holborn confirmed that another month would be sufficient time to do so.

Mr Hayward stated that the aim of today was to obtain more definitive answers to the case management points put forward for clarification on 11 April 2024. He explained that more concrete answers today would enable the NMC to take appropriate steps ahead of the next scheduled hearing date in August, without jeopardizing the current schedule.

The panel accepted the advice of the legal assessor.

In light of the information provided the panel has made the following directions:

- An agreed timetable for disclosure and the service of any documents the NMC or Mrs Wylie would rely on to be provided by 14 June 2024.

- As the panel received confirmation today that it was likely that it would only be Mr and Mrs Wylie who will be called to give evidence it determined that the current schedule for the resuming hearing should be sufficient (five days in the week commencing 19 August 2024). However, if the intention is to call other witnesses, then details should be provided to the NMC in advance of the August hearing. In any case, the panel would like further dates canvassed as a precautionary measure.

- An agreed statement of facts, if required, including reflections, testimonials etc in relation to stage 2 of the hearing by 14 June 2024.

- The hearing scheduled to resume for the week commencing 19 August 2024, will be held in person at a Northern Ireland venue arranged by the NMC. The panel received confirmation today that Mr and Mrs Wylie will be called to give evidence. In the circumstances they can decide whether they would like to attend to give evidence in person or virtually. If Mr and Mrs Wylie choose to attend virtually, then confirmation will need to be provided that I.T. has been tested ahead of the start of the hearing and will operate without issues.

- [PRIVATE].

Fitness to practise

The hearing resumed on 19 August 2024 with Mrs Wylie in attendance.

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.

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

The panel heard oral evidence from you under affirmation. The panel also heard oral evidence from Mr Wylie under affirmation.

Mr Radley submissions on misconduct

Mr Radley provided the panel with written submissions which he read out and supplemented with oral submissions.

Mr Radley, on behalf of the NMC, referred the panel to the case of *Roylance v GMC* (No. 2) [2000] 1 AC 311 which defines misconduct as a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'*

Mr Radley also referred the panel to the comments of Jackson J in *Calhaem v GMC* [2007] EWHC 2606 (Admin) and Collins J in *Nandi v GMC* [2004] EWHC2317 (Admin) who stated, *"[Misconduct] connotes a serious breach which indicates that the [Nurse's] fitness to practice is impaired"* and *"The adjective 'serious' must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners"*

Mr Radley submitted that the actions reported and found proven are failings directly related to the care of residents and the management of patients/clients who are vulnerable in life. He submitted that the actions proven against you are not simply breaches of a local disciplinary policy or minor concerns, they are matters at the heart of and fundamental to the professional's practice.

Mr Radley directed the panel to specific paragraphs within "The Code: Professional standards of practice and behaviour for nurses and midwives 2015" (the Code) and identified where, in the NMC's view, your actions amounted to misconduct.

In his oral submissions, Mr Radley referred to the oral evidence that you provided. He submitted that there was an apparent lack of acceptance to the factual findings particularly with dishonesty. He referred the panel to the training courses you had undertaken in relation to ethical behaviour and dishonesty. He submitted that it would be hard to understand how you can remediate the findings the panel have made when you did not accept them.

Mr Radley reminded the panel that in your oral evidence, you placed the emphasis on the fact that you as a Registered Manager should have been told by the finance manager about any financial concerns.

Mr Radley also reminded the panel that you found it difficult to formulate a response to his question as to whether you accept the panel found you to be dishonest.

Mr Radley submissions on impairment

Mr Radley moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and Yeong v GMC [2009] EWHC 1923 (Admin).

Mr Radley submitted that it is the NMC's position that your fitness to practice is currently impaired. He submitted that breaches of the Code involved breaching a fundamental tenet of the profession and the panel would be entitled to conclude that a finding of impairment was required.

With regards to insight, Mr Radley reminded the panel that you had provided references, reflections and training certificates. He referred to your reflective statement and reminded the panel that you blamed others, stated that you did not have knowledge of the finances and continued to deny the dishonesty found against you. He also submitted that you blamed the Trust for making you a scapegoat.

Mr Radley submitted that you have not provided an acceptance of the proven allegations, particularly dishonesty. He also submitted that you have not provided any details of steps taken to address the concerns raised by the proven allegations.

Mr Radley submitted that the likelihood of the conduct being repeated is a concern for the NMC. He invited the panel to make a finding that your fitness to practice was currently impaired.

Mr Holborn submissions on misconduct and impairment

Mr Holborn provided the panel with written submissions, which the panel have read, in which he submitted addressed the allegations of misconduct, potential lack of competence and the issue of impairment. The written submissions have been summarised as follows:

Mr Holborn submitted that given your nearly 50-year career it is more likely that the issues in question reflect competence gaps rather than intentional misconduct.

With regards to misconduct, Mr Holborn submitted that it was your understanding that financial matters were delegated to other members of your team who were better equipped with the necessary skills and expertise. He submitted that the panel's decision that you "would have known" about technical financial details does not account for the delegation of duties that is standard and necessary in managerial roles. He submitted that the fact that financial issues arose does not automatically implicate you in misconduct, especially when you took reasonable steps to delegate the tasks appropriately.

Mr Holborn submitted that the concerns appear to be isolated incidents rather than a broader pattern of incompetence or neglect.

With regards to impairment, Mr Holborn submitted that you had retired from nursing practice in 2021 with no intention of returning to work. He submitted that this alone diminished the relevance of the impairment test as your retirement meant that there was no ongoing risk to patient safety or public confidence.

Mr Holborn submitted that you remain willing to address any areas of concern that may have arisen. He also submitted that the NMC had failed to provide evidence that you pose any future risk to patients or the public.

Mr Holborn submitted that the findings of dishonesty are based on assumptions rather than clear evidence of intent. He submitted that the issues related to financial management in the care home are more appropriately characterised as misunderstandings or competence gaps rather than deliberate dishonesty.

Mr Holborn invited the panel to find that your actions did not amount to serious professional misconduct and any issues that arose were related to competence or misunderstandings.

Mr Holborn also invited the panel to find that your fitness to practice was not currently impaired. He submitted that given your retirement, the absence of any ongoing risk, and your willingness to engage in appropriate reflection and learning, a finding of impairment is neither necessary nor justified.

Mr Holborn also invited the panel to find no dishonesty. He submitted that the evidence does not support that conclusion and you had not acted dishonestly.

In response to the written submissions, Mr Radley submitted that the panel should consider that while you had retired, you could choose to return to nursing practice. He also submitted that it appeared that Mr Holborn, in his written submissions, was trying to “go behind” the panel’s decision on the facts. He submitted that this could not happen as a decision on facts had already been made.

[PRIVATE]. He also submitted that it was not his intention to “go behind” the panel’s decision on facts. He submitted that he was addressing the issues of misconduct and impairment.

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

In response to the legal advice, Mr Radley referred the panel to the case of General Optical Council v Clarke [2018] EWCA Civ 1463 where it was said that the fact of retirement from the profession did not assist the panel with findings of being unfit to practice through impairment. The focus of the panel’s inquiry must be on current

impairment of fitness to practice. Fitness to practice does not depend on whether the professional intends to practice.

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.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

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

> ***'Prioritise people***
> *You put the interests of people using or needing nursing or midwifery services first. You make their care and safety your main concern and make sure that their dignity is preserved and their needs are recognised, assessed and responded to. You make sure that those receiving care are treated with respect, that their rights are upheld and that any discriminatory attitudes and behaviours towards those receiving care are challenged.*
>
> ***1 Treat people as individuals and uphold their dignity***
>
> *To achieve this, you must:*
>
> *1.1 treat people with kindness, respect and compassion*

1.5 respect and uphold people's human rights

3 Make sure that people's physical, social and psychological needs are assessed and responded to

To achieve this, you must:

3.4 act as an advocate for the vulnerable, challenging poor practice and discriminatory attitudes and behaviour relating to their care

4 Act in the best interests of people at all times

To achieve this, you must:

4.2 make sure that you get properly informed consent and document it before carrying out any action

11 Be accountable for your decisions to delegate tasks and duties to other people

To achieve this, you must:

11.2 make sure that everyone you delegate tasks to is adequately supervised and supported so they can provide safe and compassionate care

11.3 confirm that the outcome of any task you have delegated to someone else meets the required standard

14 Be open and candid with all service users about all aspects of care and treatment, including when any mistakes or harm have taken place

The professional duty of candour is about openness and honesty when things go wrong. "Every healthcare professional must be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress." Joint statement from the Chief Executives of statutory regulators of healthcare professionals.

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

To achieve this, you must:

16.3 tell someone in authority at the first reasonable opportunity if you experience problems that may prevent you working within the Code or other national standards, taking prompt action to tackle the causes of concern if you can

16.4 acknowledge and act on all concerns raised to you, investigating, escalating or dealing with those concerns where it is appropriate for you to do so

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

16.6 protect anyone you have management responsibility for from any harm, detriment, victimisation or unwarranted treatment after a concern is raised

17 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection

To achieve this, you must:

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

20 Uphold the reputation of your profession at all times

To achieve this, you must:

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

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

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

20.4 keep to the laws of the country in which you are practising

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

20.8 act as a role model of professional behaviour for students and newly qualified nurses, midwives and nursing associates to aspire to

21 Uphold your position as a registered nurse, midwife or nursing associate

To achieve this, you must:

21.3 act with honesty and integrity in any financial dealings you have with everyone you have a professional relationship with, including people in your care

23 Cooperate with all investigations and audits

This includes investigations or audits either against you or relating to others, whether individuals or organisations.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct.

The panel bore in mind that the charges found proved do not relate to care, it considered that you had a duty to financially safeguard residents under your care.

The panel was of the view that the charges found proved are serious and relate the financial mistreatment of vulnerable residents. The financial mistreatment cover costs in relation to supervision, meals, accommodation, care, transportation and holidays. It also bore in mind that this occurred over a significant period of time.

The panel noted that you would have been aware of what costs should have been levied for the residents in question. However, it was clear that some of these additional charges were levied without justification, and it appeared that you charged residents what you deemed to be appropriate without regard of the true cost of providing the service.

The panel also noted that the concerns raised relate to you not fulfilling your duties as a Registered Manager. It reminded itself of the 2005 Regulations', particularly "PART V MANAGEMENT" and Section 28 entitled 'Financial Position'. It reminded itself that it had determined that, in light of these regulations, you could not claim that you had no responsibility for the financial management of both homes. It also reminded itself that while you were in a position to delegate, as the Registered Manager and Registered Person of both homes you could not to rid yourself of your financial responsibilities. Therefore, you remained statutorily responsible for finance.

Additionally, the panel also determined that you as the Registered Manager had a statutory responsibility, to comply with the requests for information from RQIA and to make this available in a timely manner. However, you did not do this.

The panel was satisfied that fellow practitioners would find your conduct in relation to these charges deplorable. It also therefore determined that your actions in relation to the charges found proved individually and collectively fell seriously short of the conduct and standards expected of a nurse and amounted to 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.

In coming to its decision, the panel had regard to the Fitness to Practise Library, updated on 27 March 2023, which states:

> *'The question that will help decide whether a professional's fitness to practise is impaired is:*
> *"Can the nurse, midwife or nursing associate practise kindly, safely and professionally?"*
> *If the answer to this question is yes, then the likelihood is that the professional's fitness to practise is not 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.

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

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

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

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

a) *has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

b) *has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*

c) *has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*

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

For reasons already set out above, the panel considered that limbs a, b, c and d were engaged by your misconduct in this case.

The panel bore in mind that some of the residents under your care were vulnerable. It was of the view that you had a duty to safeguard your residents financially, however you failed to do this. As a result, residents were placed at significant risk of harm financially and could have caused them or their families harm as a result of your misconduct.

The panel also considered that your misconduct had breached the fundamental tenets of the nursing profession and had therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel recognised that it must make an assessment of your fitness to practise as of today. It referred to the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin)* and considered whether the concerns identified in your nursing practice were capable of remediation, whether they have been remedied and whether there was a risk of repetition of a similar kind at some point in the future. In considering those issues the panel had regard to the nature and extent of the misconduct and considered whether you had provided evidence of insight and remorse.

Regarding insight, the panel noted that you had denied all of the charges in relation to misconduct. It recognised your right to contest the charges.

After receiving the panel's determination regarding facts you gave oral evidence under affirmation.

You stated that at the time of the allegations, there was no legislation for transport until 2013 and the RQIA did not have a policy for it. You stated that when there was legislation for it, it was scrutinised by your financial manager. You stated that the financial manager was competent in the role and would ensure that "everything was above board".

The panel noted that you found it particularly difficult to accept that the panel had found you to be dishonest, in its findings, when cross examined by Mr Radley regarding your reflective statement.

Additionally, when the panel asked what steps you had taken to demonstrate that you are an honest person, you cited the courses you had undertaken. You also stated that it was against your character to be dishonest but would accept it if there was evidence. However, you stated that you could not accept that the panel had found your conduct to be dishonest.

In response to further questions by the panel, you stated that you had been scapegoated by the Trust and maintained that you were not involved in the financial matters of the homes so you could not take responsibility. You stated that regardless of the legislation, it would be impossible for you to manage the finances and care for the residents. You stated that in similar circumstances, you would not undertake the role of Registered Manager if it required you to be responsible for the finances and care in the home at the same time.

Nevertheless, you also stated that in hindsight you did not accept that you had responsibilities for financial matters at the homes.

It appeared to the panel that you still had not accepted its findings on the facts. It noted that even after receiving its determination regarding facts you, continued to deny the charges particularly dishonesty.

There was no recognition of the impact your misconduct had on residents under your care, on their families who were financing the costs or the fact that they had entrusted you to safeguard them financially. You also provided the panel with limited explanation of how you would approach similar circumstances in the future.

In light of the above, the panel determined that you had limited insight.

The panel was satisfied that some of misconduct in this case is capable of being addressed. Therefore, the panel carefully considered the evidence before it in determining whether or not you had taken steps to strengthen your practice.

The panel took account of the courses you had undertaken. It noted that you had undertaken courses in relation to probity and ethics, which the panel found to be relevant to the concerns raised. However, you could not demonstrate how this strengthened your practice or how you would implement any additional training into your practice moving forward. The panel also noted your positive testimonials. However, in the absence of evidence of significant insight or strengthened practice there was no evidence that the concerns had been remedied to date. The panel noted that it had no evidence before it of any action taken by you to acknowledge or implement changes in your practice to address the concerns identified in this hearing.

The panel considered that misconduct involving dishonesty is less easily remediable than other kinds of misconduct. However, in the panel's judgment, evidence of insight, remorse and reflection together with evidence of subsequent and previous integrity are all relevant in considering the risk of repetition, as is the nature and duration of the dishonesty itself.

The panel was of the view that the first step in putting things right was to acknowledge the dishonesty. However, it bore in mind that you continued to deny the charges found proved or accept that your conduct was dishonest.

The panel also noted that you had continually maintained that you were responsible for care and Mr Wylie was responsible for financial matters in relation to the homes. Throughout this hearing Mr Hayward and the panel had highlighted the legislation and cited your financial responsibilities as a Registered Manager. You also continually stated that you delegated the financial matters to the finance manager. However, it was highlighted to you that you could not to absolve yourself from the financial oversight responsibilities of your role. You continued to maintain that you had been scapegoated by the Trust.

The panel was satisfied that your conduct in relation to your denial of the dishonest conduct was attitudinal and therefore more difficult to remediate.

The panel took account of the contextual factors in relation to this case. It accepted that organisations involved in the wider management of the care of vulnerable patients, could have exercised better oversight regarding their protection. However, it was of the view that in light of this, your responsibilities in safeguarding them financially was heightened.

The panel also took account of the submissions of Mr Holborn who stated that the misconduct was related to competence or misunderstandings and not a deliberate breach of professional standards. However, the panel did not accept this. It noted that throughout the hearing, there was no evidence presented to the panel to suggest this or support the notion that there was a lack of competence in your nursing practice.

The panel also considered the effect of your retirement from practice. The panel reflected on what the Court of Appeal had said in the Clarke case referred to above by Mr Radley. The panel considered that your intention not to return to practice did not have a material impact on its decision as to whether you were currently impaired. The panel were also cognisant of the fact that you could decide to return to practice at any time.

The panel was of the view that in the absence of insight, remorse, evidence that you had implemented any remediation into your nursing practice in the areas of concern identified by the panel, you were liable to repeat your actions in the future. It also noted that it had no evidence before it of any action taken by you to address the attitudinal issues which appeared to underpin them. The panel therefore 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 was satisfied that, having regard to the nature of the misconduct in this case, *"the need to uphold proper professional standards and public confidence in the profession would be undermined"* if a finding of current impairment were not made. It was of the view that a reasonable, informed member of the public would be very concerned your fitness to practise was not found to be impaired and therefore public confidence in the nursing profession would be undermined if you were allowed to practice unrestricted.

For all the above reasons the panel concluded that your fitness to practise is currently impaired by reason of misconduct on both public protection and public interest grounds.

Mr Hayward submissions in relation to your reflective statement

The hearing resumed on 18 November 2024.

Mr Hayward referred the panel to your reflective statement provided to the panel this morning. He submitted that for the first time there is a level of recognition and a level of acceptance of the panel's findings.

Mr Hayward submitted that from the NMC's perspective, there continues to be some concerns in what you say about dishonesty. He cited your reflective statement where you stated that the assumption of dishonesty by the NMC is different to your own personal understanding of dishonesty. He also highlighted to the panel that your reflective statement stated that while you still disagree with the findings of the NMC, you understand how the NMC have come to their decision.

Mr Hayward submitted that he does not see any acknowledgement of dishonesty by you. He submitted that there appears to be an acknowledgement of a potential validity of the panel's findings of dishonesty but your understanding of dishonesty is different. He

submitted that you appear to imply that on your understanding of dishonesty, there was no dishonesty.

Mr Hayward drew the panel's attention to the cases of *Lusinga v NMC [2017] EWHC 1458 (Admin)* and *Watters v NMC [2017] EWHC 1888 (Admin)*, which were quoted in your reflective statement. He also highlighted, within your reflective statement, where you stated that the NMC would always judge dishonesty differently to a registrant or the public. He also referred the panel to the definition of dishonesty in the case of *Ivey*. He submitted that the question of whether conduct was honest or dishonest should be determined by the fact finder by applying the objective standards of ordinary decent people. He submitted that there was no requirement that the defendant must appreciate that what she has done is by those standards, dishonest. Mr Hayward submitted that the standards that the Supreme Court has said that the courts, and therefore also the NMC, should apply Is simply that of ordinary decent people.

Mr Hayward submitted that you have concluded in your reflective statement that the courts and the NMC can have a different understanding of dishonesty than the public. He submitted that this was wrong and the panel may find this concerning.

Mr Hayward submitted that the points arising from the case of *Lusinga* and *Watters* is that there is a scale of dishonesty with some allegations being at the lower scale of dishonesty while other allegations are at the higher scale of dishonesty. He submitted that the aforementioned cases are very different than the facts in this case and therefore do not assist the panel.

Mr Hayward reminded the panel of its findings of dishonesty during its consideration of the facts of this case. He submitted that the appropriate test for dishonesty in this case was the test adopted by the Supreme Court in *Ivey*, namely what ordinary objective members of the public would have found dishonest. He submitted that the panel made specific findings as to what you actually did know about finances in relation to day care, meals,

transport and supervision and if they were dishonest by the standards of objective, decent people.

Sanction

The panel has considered this case very 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 has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Hayward submitted that the appropriate sanction in this case is a striking off order. He referred the panel to the NMC Guidance entitled “Factors to consider before deciding on sanctions” (reference SAN-1), “Considering sanctions for serious cases” (reference SAN-2) and “Available sanction orders” (reference SAN-3).

Mr Hayward took the panel through potential aggravating and mitigating factors the panel could consider to be applicable in this case.

Mr Hayward then took the panel to the NMC Guidance entitled, “Considering sanctions for serious cases” (Reference: SAN-2) and in particular the “Cases involving dishonesty”.

Mr Hayward reminded the panel of the decision it had taken in finding that your fitness to practice was currently impairment. He submitted that there was no evidence that the concerns had been remedied. He referred the panel to your reflective statement where you state that you promise to remedy the concerns but have not provided examples of how that would actually happen.

Mr Hayward took the panel through the NMC guidance “Available sanction orders”. He submitted that the imposition of a caution order would not be compatible with the concerns held by the panel.

Mr Hayward submitted that a conditions of practice order was usually appropriate where there was no evidence of harmful deep-seated personality or attitudinal problems. He reminded the panel that it had found significant attitudinal problems and submitted that a conditions of practice order would be insufficient to meet the public protection criteria.

Mr Hayward submitted that a suspension order would be appropriate in cases where the misconduct was not fundamentally incompatible with the nurse continuing to be a registered professional and there is no harmful deep-seated personality or attitudinal problems. He submitted that this does not apply in your case.

Mr Hayward invited the panel to impose a striking off order notwithstanding the fact that you have retired and you do not intend to practise.

Mr Holborn submitted that the concerns of this case came to light on 5 December 2012. He submitted you then called an open meeting with staff and residents. He submitted that you stated at the meeting that if the allegations were accepted, you would make repayments to residents. He submitted that all repayments were made before the matter was referred to the NMC.

Mr Holborn referred the panel to your reflective statement. He submitted that this was an example of you reaching out and developing insight in a way that is suitable for your profession.

Mr Holborn submitted that you have retired, you are developing insight, you have undertaken reflective practice and undertaken courses. He submitted that you have

cooperated and engaged with the NMC for over 10 years and credit should be given to you for your level of engagement, attendance and cooperation.

Mr Holborn submitted that the sanction should be proportionate to the misconduct found. He submitted that the mitigation engaged in this case was that you have engaged throughout and have been willing to keep an open mind. He submitted that you have your own view, but you have a mind that can be influenced. He submitted that you are now going down the path of clear remorse, insight and remediation.

Mr Holborn submitted that the process over the last 10 years had been of a punitive nature. He submitted that you are a professional person with over 50 years of practice. He submitted that you love working for patients and that is something that has been forgotten in all this. He submitted that there have been no concerns raised about your clinical practice.

Mr Holborn submitted that the panel may see your fundamental error as not understanding the whole reasoning behind having accountability for financial transactions. He referred the panel to your reflective statement that where you have stated you would not carry out your practice in the same way if you were to return to the nursing profession.

Mr Holborn submitted that your recent reflections should be considered with your other reflections.

Mr Holborn took the panel through the mitigating factors he considered to be applicable in your case.

Mr Holborn invited the panel to impose a workable conditions of practice order upon completion of a return to practice course. He also submitted that the panel could impose a caution order or impose a short suspension order to safeguard the public.

Mr Holborn submitted that the imposition of a striking off order would be inappropriate in this case.

The panel asked how conditions of practice would work given that you have retired and do not intend to work as a registered nurse again.

Mr Holborn submitted that the public can be safeguarded by a requirement that you need to undertake a return to practice course in relation to finances. He also submitted that a condition could be that you work with a nurse who provides a report to the NMC at regular intervals.

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 has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- A pattern of serious misconduct over a significant period of time;
- Conduct which put vulnerable residents at risk of suffering financial harm;
- Abuse of a position of trust;
- Personal financial gain;
- Lack of insight into your failings.

The panel noted that you had engaged with the NMC, which is a requirement for registered nurses. The panel had not been made aware of any previous concerns raised with regards to your clinical practice.

The panel also took account of the submission made by Mr Holborn. It noted that he submitted that you had made repayments to residents. However, the panel had no evidence before it, namely bank statements or other objective verification of repayment, to demonstrate that repayments had been made.

[PRIVATE].

In light of this, the panel determined that there were no mitigating factors engaged in this case.

The panel took account of the NMC guidance entitled, "Considering sanctions for serious cases" (Reference: SAN-2). Under the sub-heading entitled "Cases involving dishonesty" it stated:

> *"Honesty is of central importance to a nurse, midwife or nursing associate's practice. Therefore allegations of dishonesty will always be serious and a nurse, midwife or nursing associate who has acted dishonestly will always be at some risk of being removed from the register. However, in every case, the Fitness to Practise Committee must carefully consider the kind of dishonest conduct that has taken place. Not all dishonesty is equally serious. Generally, the forms of dishonesty which are most likely to call into question whether a nurse, midwife or nursing associate should be allowed to remain on the register will involve:*
>
> - *…*
> - *misuse of power*
> - *vulnerable victims*
> - *personal financial gain from a breach of trust*
> - *direct risk to people receiving care*
> - *…"*

The panel determined that the above was engaged in your case. The panel bore this in mind as it went on to consider sanctions.

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.

The panel 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 mindful that any conditions imposed must be proportionate, measurable and workable. It bore in mind that there were no clinical concerns raised in this case.

The panel also bore in mind that Mr Holborn had made reference to the fact that you had retired [PRIVATE]. When it asked how conditions would be applicable in such circumstances, Mr Holborn submitted that you could be required to take a return to practice course and undertake courses in relation to finances.

Additionally, the panel was of the view that the dishonesty and the attitudinal concerns identified in this case was not something that can be easily addressed through retraining. The panel noted that you are not currently working as a registered nurse as you had

retired. In light of this, the panel was of the view that there are no practicable or workable conditions that could be formulated in these circumstances.

The panel concluded that placing conditions on your registration would not address the facts found proved, nor would it adequately address the seriousness of this case. Further it would not protect the public 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 suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel was of the view that your misconduct in this case was not a single incident. It was a pattern of serious misconduct repeated over a significant period of time and it was wide ranging. It also bore in mind that in its consideration for current impairment, you had provided a reflective statement. However, in considering this, it had found that your dishonest conduct was attitudinal.

The panel took account of the reflective statement you provided for the panel's consideration today. While it found this to be a development over the aforementioned reflective statement, it noted that there was no acknowledgement of how your conduct contributed to the financial abuse of vulnerable residents. There was no apology, and no remorse demonstrated. Further, there appeared to a focus on the impact these matters had on you as opposed to acknowledging the impact your conduct had on the vulnerable residents in your care, their families or the nursing profession.

The panel was satisfied that the risk of these matters being repeated was low, mainly due to the fact that you are retired, and you are no longer an owner of a care home. However, it was of the view that there was a lack insight and understanding of the importance of honesty.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by your actions is fundamentally incompatible with you remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in looking at 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?*

The panel bore in mind that it had found that your conduct resulted in a number of vulnerable residents suffering financial harm. Your actions were significant departures from the standards expected of a registered nurse, which are fundamentally incompatible with you remaining on the register. It was of the view that the findings in this particular case demonstrate that your actions were serious and to allow you to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

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. Having regard to the effect of your actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct yourself the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

This will be confirmed to you in writing.