

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

**Substantive Hearing
Monday 9 September – Friday 20 September 2024**

Virtual Hearing

Name of Registrant: Michelle Clare Day

NMC PIN 08G2400E

Part(s) of the register: Registered Nurse
Adult Nursing – September 2008

Relevant Location: Plymouth

Type of case: Misconduct

Panel members: Caroline Rollitt (Chair, Lay member)
Catherine McCarthy (Registrant member)
Tricia Breslin (Lay member)

Legal Assessor: Juliet Gibbon

Hearings Coordinator: Claire Stevenson (9 September – 19 September 2024)
John Kennedy (20 September 2024)

Nursing and Midwifery Council: Represented by Alban Brahimi, Case Presenter

Mrs Day: Not present and not represented

Facts proved: Charges 1a, 1b, 1c, 1d, 1e, 1f, 1g, 2, 3, 5 and 6

Facts not proved: Charge 4

Fitness to practise: Impaired

Sanction: **Striking-off order**

Interim order: **Interim Suspension Order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Day was not in attendance and that the Notice of Hearing letter had been sent to Mrs Day's registered email address by secure email on 4 July 2024.

Mr Brahim, on behalf of the Nursing and Midwifery Council (NMC), 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, that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Day'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 Day 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 Day

The panel next considered whether it should proceed in the absence of Mrs Day. It had regard to Rule 21 and heard the submissions of Mr Brahim who invited the panel to continue in the absence of Mrs Day. He submitted that Mrs Day had voluntarily absented herself, that she has not asked for an adjournment and there was no ambiguity regarding her not wanting to take part in the hearing.

Mr Brahim referred the panel to the documentation from Mrs Day which included an email dated 19 May 2024 which states:

'I can confirm that I will not be attending the hearing. I am not looking to continue with a nursing career nor will I be looking to return to work in the care sector in any form in the future.'

Mr Brahimi informed the panel that despite the email predating the notice of hearing, Mrs Day was referring to not attending this substantive hearing.

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 is not absolute and is one that should be exercised *'with the utmost care and caution'*.

The panel has decided to proceed in the absence of Mrs Day. In reaching this decision, the panel has considered the submissions of Mr Brahimi, and the advice of the legal assessor. It has 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. It noted that:

- No application for an adjournment has been made by Mrs Day;
- Mrs Day has informed the NMC that she has received the Notice of Hearing and that she will not be attending;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses are scheduled to attend to give live evidence.
- Not proceeding may inconvenience the witnesses, their employers and, for those involved in clinical practice, the clients who need their professional services;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and

- There is a strong public interest in the expeditious disposal of the case.

There is some disadvantage to Mrs Day in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Mrs Day at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mrs Day's decisions to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make representations on her own behalf.

In these circumstances, the panel has decided that it is fair to proceed in the absence of Mrs Day. The panel will draw no adverse inference from Mrs Day's absence in its findings of fact.

Details of charge

That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;
 - a. Attended the Home when you were not at work to meet with Resident A's friends;
 - b. Spent extra time with Resident A during one or more shifts;
 - c. Divulged personal information about yourself to Resident A [PRIVATE] and/or personal financial information, as set out in Schedule 1;

d. Accepted or acquiesced the gift of property bequeathed in Resident A's will;

e. Accepted the gift of shares from Resident A;

f. Accepted a cash gift of approximately £200 from Resident A;

g. Accepted a gift of flowers from Resident A;

2. Failed to inform your Employer about the gifts particularised in Charge 1d and/or Charge 1e and/or Charge 1f and/or Charge 1g above.

3. Your conduct at Charge 2 above was dishonest as you knew that you were under an obligation to raise the receipt of one or more of these gifts and you chose not to do so.

4. Following your suspension from the Home and being told not to involve yourself in any of the Company's activities not contact any of the Company's customers, employee or suppliers without the permission of your manager contacted Person B, Resident A's Solicitor.

5. During an interview with Person A on 23 January 2023, when asked if you had 'received anything else' from Person A [other than the gift in their will] initially stated that you had not, which was untrue.

6. Your conduct at Charge 5 above was dishonest as it was motivated to conceal the other gift/s you had received from Resident A.

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

Schedule 1

[PRIVATE]

Decision and reasons on application to admit hearsay evidence

The panel received written submissions from Mr Brahimi under Rule 31 to admit the hearsay documentary evidence including various witness statements of witnesses who are not attending to give live evidence.

Mr Brahimi submitted there is no unfairness to Mrs Day by having the evidence placed within the bundle and put before the panel as this would not be in line with best practice or the relevant authorities such as *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin) at paragraph 58 where it set out that the panel should have been provided at the fact finding stage with all of the documents which the NMC had submitted. Also, paragraph 59, which explains that the decision on admissibility was a judgement for the panel to make, not the legal assessor or the case presenter. In the absence of the appellant the only proper way for the panel to judge the relevance and admissibility of the statements was to read them for themselves. So essentially the panel have to see what it is they're being asked to adjudicate on. The panel cannot be expected to judge the relevance and fairness of evidence if they cannot see it for themselves, otherwise the panel would be relying on a generalised description from Counsel and placing reliance on Counsel's interpretation, which is wholly wrong as Counsel is not the Judge of fact.

Mr Brahimi told the panel that if it refuses the hearsay application, it is submitted that as a professional panel, it would be able to put it out of its mind as the panel is not a jury but an adjudicator on what to admit. It is submitted that the panel is required to consider the merits of the evidence and decide whether to formally admit the evidence, to accept it into the evidence the panel consider when it retires. The case of *EI Karout v NMC* (2020) EWHC 3079 adopts the principles of *Ogbonna v NMC* (2010) EWCA Civ 1216 and *Thorneycroft*, and makes clear the need for a panel to undertake a careful balancing

exercise before admitting hearsay evidence, especially in a case where the evidence is the sole or decisive evidence on an allegation. The key issue in all cases is one of “fairness”. If the panel decide to admit the hearsay evidence, then the panel can determine what weight to attach to that evidence.

Mr Brahimy submitted the NMC wishes to rely on the exhibit evidence of Witness 1 to pursue the NMC’s statutory objective, balancing the same with the important public interest in progressing hearings as expeditiously as is fairly possible.

The panel will have seen that there are several statements collected by Witness 1 as part of their investigation; of significance is the evidence of Resident A where he provides at least two accounts of what took place between him and Mrs Day.

Mr Brahimy invited the panel to allow the entirety of these exhibits to be admitted as evidence, notwithstanding that some are hearsay, as they meet the following criteria from the case of *Thorneycroft*:

- a. Firstly, it is submitted that the evidence is relevant as it goes towards the charges.
- b. Secondly, the NMC submit it would be fair to admit the evidence.

Mr Brahimy submitted that there is interlinking evidence to support the charges collectively as demonstrated in the evidential matrix. On each of the charges, there are at least two sources of evidence in support of this application.

Mr Brahimy submitted that it was known to Mrs Day that such evidence would be relied upon since the service of material on 4 July 2024, of which there has been no challenge to this material. Further to this, the material is produced by a witness that will be in attendance and can answer questions as to the way in which such material was received and/or produced. The panel will have recognised that there are certain responses by Witness 1 in her investigations that do not contradict what other witnesses say.

Mr Brahimi submitted there is no evidence or indication to support reasons of fabrication and such a point has not been raised by any party.

Mr Brahimi acknowledged these are serious charges and could have an adverse impact on Mrs Day. However, this should be weighed up against the interest of justice that this is relevant evidence and that Mrs Day has waived her opportunity to challenge such evidence by voluntarily absenting herself.

Mr Brahimi submitted the panel will have seen that within the exhibits [PRIVATE], meaning that hearsay evidence is the only way to hear their (Resident A's) account. In so far as other witnesses, given their accounts are not the sole and decisive evidence, and there has been no request for their attendance (or challenge) by Mrs Day, the NMC has put forward matters as hearsay which is permissible so long as the panel accepts that it would be relevant and fair to admit it.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included that Rule 31 provides that, so far as it is '*fair and relevant*', a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred the panel to the relevant cases which included: *Thorneycroft*, *El Karout*, *Ogbonna*, *Mansaray v Nursing and Midwifery Council [2023] EWHC 730 (Admin)*, *R (Bonhoeffer) v General Medical Council [2011] EWHC 1585 (Admin)*.

The legal assessor reminded the panel of the principles set out in *Thorneycroft*. With regard to admitting the statements of absent witnesses it was held that, having considered *Ogbonna* and *Bonhoeffer*, the following principles emerge:

1. The admission of the statement of an absent witness should not be regarded as a routine matter and the Fitness to Practise (FTP) rules require the Panel to consider the issue of fairness before admitting the evidence.

2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but will not always be a sufficient answer to the objection to admissibility.
3. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence.
4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit requires the Panel to make a careful assessment, weighing up the competing factors. The assessment should involve a consideration of the issues in the case, the other evidence to be called and the potential consequences of admitting the evidence and the Panel must be satisfied having undertaken this assessment that, either the evidence is demonstrably reliable or that there is some means of testing its reliability.

The judgment in *Thorneycroft* went on to summarise the principles arising from previous cases and set out seven considerations which the panel may wish to take into consideration. These considerations are set out above.

The panel gave the application to admit the NMC hearsay evidence careful consideration. It noted that the hearsay evidence has been disclosed to and is not challenged by Mrs Day.

[PRIVATE]. The panel has not been given any reason for the other witnesses' non-attendance. The panel considered the witness statements and related exhibits individually. The majority of the hearsay application relates to evidence being given by Witness 1 regarding her internal investigation into Mrs Day and the panel considered it can question her on all of the evidence.

The panel considered the incident report dated 31 January 2023 which included the statement of Witness 3. It noted this witness initially reported to Witness 1 that Resident A had approached them and had disclosed that they had updated their will and left property to Mrs Day which is very specific information. An internal investigation was started and this incident had been put to Mrs Day in the investigation meeting where she did not deny it and was given the opportunity to answer these questions.

The panel next considered an incident report from Witness 4 dated 23 January 2023. This references a chance meeting where Witness 4 met Mrs Day beside the lift and they went down to the treatment room. Mrs Day was upset and admitted to receiving shares and being left a house in Resident A's will.

The panel went on to consider an incident report dated 27 January 2023 which concerned Resident A's legal representative who attended at Merafield Nursing Home (the Home) regarding changing his Will. Witness 4 stated she was unable to discuss the details of his will with anyone due to her legal responsibilities and that a court order would need to be obtained to allow her to discuss any details.

The panel next considered Mrs Day's reflective statement sent to Witness 1 on 10 March 2023. The panel considered this evidence to be particularly relevant as it is unable to question Mrs Day. It considered it would be unfair to Mrs Day not to admit the evidence as this is her reflection in her own words.

The panel went on to consider the discussion with Resident A dated 1 February 2023. The panel considered this evidence relevant [PRIVATE] and this information goes to the crux of the charges. The panel noted that Witness 1 will be able to answer panel questions.

The panel also considered the exhibit which is a continuation of the discussion with Resident A dated 2 and 3 February 2023. This evidence was submitted by Witness 9 who was present during the investigation meetings with Mrs Day. Resident A specifically asked to speak to this witness who then documented the discussion.

The panel next considered the handwritten statement of Witness 6 dated 1 February 2023 which corroborates Witness 4's evidence. This evidence has been presented to Mrs Day who has had the opportunity to speak to the panel but has chosen not to.

The panel next considered the statement of Witness 7 which is signed but not dated. This witness details what Resident A told her in a discussion in which he said that he had changed his will in favour of Mrs Day [PRIVATE]. This evidence corroborates other evidence in the case.

The panel finally considered the statement of Witness 8 dated 1 February 2023 who had a discussion with Resident A in which he acknowledged knowing personal details about Mrs Day's private life. This was also put to Mrs Day who has not challenged this evidence.

The panel conducted a careful balancing exercise and took account of the principles in *El-Karout*, *Mansaray*, and *Thorneycroft*. It considered fairness to the NMC and Mrs Day. The panel noted that these are serious allegations, that include two charges of dishonesty. The panel considered that the evidence in respect of Witness 1 was not the sole and decisive evidence but that the hearsay evidence is supporting evidence.

In these circumstances, the panel determined that this documentary hearsay evidence can be admitted. At a later stage it will consider the weight to be given to all the hearsay evidence. The panel is aware that it has a responsibility to examine carefully the evidence placed before it by the NMC and not accept all evidence at face value without question.

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

Mr Brahimi made a request that this case be held partially in private on the basis that proper exploration of Mrs Day's case involves reference to [PRIVATE]. The application was made pursuant to Rule 19 of the Rules.

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.

The panel determined to hold the hearing partially in private when reference was made to [PRIVATE].

Decision and reasons on application to amend the charge

The panel heard an application made by Mr Brahim, to amend the wording of Charge 1(d) and Charge 5.

The proposed amendment to Charge 1 (d) was to correct a typographical error by inserting the words “*to be*” before the word ‘*bequeathed*’. It was submitted by Mr Brahim that the proposed amendment would provide clarity and more accurately reflect the evidence. The proposed amendment to Charge 5 was to change the word from Person to Resident.

That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;
 - d. Accepted or acquiesced the gift of property **to be** bequeathed in Resident A’s will;

...

5. During an interview with Person A on 23 January 2023, when asked if you had ‘received anything else’ from ~~Person~~ **Resident A** [other than the gift in their will] initially stated that you had not, which was untrue.’

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

The panel was of the view that such amendments, as applied for, were in the interests of justice. The panel was satisfied that there would be no prejudice to Mrs Day and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendments.

Background

The charges arose whilst Mrs Day was employed as a registered nurse at the Home in the position of Clinical Lead, where she had clinical oversight of nine clinically trained Nurses and Health Care Assistants. A whistleblowing report by Witness 3 was made to Witness 1 who was informed that Resident A had bequeathed Mrs Day a property in their will. It subsequently came to light following an internal investigation, that she had received shares, a gift of £200 in cash and a bunch of flowers from Resident A.

Mrs Day accepted the gifts but failed to inform Management in accordance with the Company's gifting policy in both the employee handbook and the policy and procedures in the Quality Compliance Systems Application (the CQS app).

Mrs Day was suspended from her employment during the investigation and she was initially told not to contact other staff members or Resident A. On 26 January 2023 Mrs Day was sent a suspension letter which instructed:

'you must not involve yourself in any of the Company's activities nor contact any of the Company's customers, employees or suppliers without the permission of your manager.'

It is alleged the Mrs Day subsequently contacted Resident A's solicitor.

The NMC's position is that Mrs Day knew that she was under an obligation to disclose receipt of any gifts and she was dishonest in not doing so as she would have known that was her responsibility under the terms of her employment and the NMC Code of Practice. It is also alleged that Mrs Day was dishonest when she denied having received any further gifts (other than the bequest of the property) when initially asked in the first interview.

Decision and reasons on facts

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor.

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 Brahimi. It also took into account the admissions made by Mrs Day during the local investigation and in her reflective statement.

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:

- Witness 1: Registered Manager of the Home;
- Witness 2: Registered Nurse previously employed at the Home.

Charge 1a

'That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

a. Attended the Home when you were not at work to meet with Resident A's friends;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to the incident report of the initial interview meeting held on 23 January 2023, Resident A's accounts given to Witness 1 and Witness 9, Mrs Day's reflective statement and the minutes of the formal investigation interview held on 10 February 2023.

The panel noted from Witness 1's evidence that Mrs Day came into the Home dressed up on her day off. This appeared to be a social visit to see Resident A and their friends and Mrs Day stayed for several hours. Witness 1 considered this to be out of the ordinary.

The panel noted from her reflective statement that Mrs Day does not dispute going to Resident A's room on her day off and she accepted she did meet his friends. It noted she stated:

'I am known for 'going above and beyond' and have demonstrated this in many different ways; visiting residents with my dog on days off, taking a resident on a day out, liaised with other staff/professionals to enable residents wishes to be met, received feedback from other staff that I make a difference and can be counted on by staff, residents and families to 'get things done.'

The panel had regard to the notes of the discussion between Witness 1 and Resident A in which it is stated:

'Resident A said that he introduced Michelle as "his very good friend" and that they got along very well and that she looks after him well. Resident A said he told them that Michelle was the main beneficiary of his Will.'

The panel noted that Witness 1, in her written statement stated:

'I do recall Mrs Day coming in on her day off to speak to Resident A, the date of this was 29 April 2023 [this was subsequently amended by Witness 1 to 29 April 2022]. I know it was this date as I checked the visitor book. Mrs Day could be quite a materialistic person and was quite open in the money that she spent. When she came in, she seemed very dressed up and spent a few hours with Resident A and his friends in his room. I wondered why Mrs Day had spent such a long period in his room. Whilst it did strike me as out of the ordinary, I did not question Mrs Day because I trusted her. I have never known Mrs Day to come in on her day off and spend that amount of time with any individual at the nursing home. She occasionally would pop in with her dog and speak to the nurses on break. But she has never done that with a resident or their friends.

Mrs Day did not offer a purpose of coming in, she walked the two friends to the door. I remember when I saw that being shocked that she was still here. [PRIVATE] There was something odd about Mrs Day doing this, but I did not ask, and she did not speak to me about it. There was no reason for me to question it as I thought that she was just visiting. I would not have expected her to be involved with a resident talking about their wills.'

The panel noted this was consistent with what Witness 1 had said in her oral evidence.

The panel considered Mrs Day's behaviour of spending some considerable time with Resident A and his friends that day where there was some discussion around Resident A's will and against a background where she had previously received gifts from this

resident, had breached professional boundaries. The panel found this charge proved on the balance of probabilities.

Charge 1b

‘That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;
 - b. Spent extra time with Resident A during one or more shifts;’

This charge is found PROVED

In reaching its decision the panel had regard to all the evidence before it. It had particular regard to the notes of the discussion between Witness 1 and Resident A on 1 February 2023 where Witness 1 asked Resident A how often he saw Mrs Day:

‘he replied that she worked 3 long day shifts each week and on each shift she would visit him in the afternoon and again in the evening. Resident A stated that if [Mrs Day] was single he would actively pursue her [PRIVATE].’

The panel then noted when Mrs Day was asked about her relationship with Resident A she said *“I find it shocking if those were his feelings, that could I have missed it. I did see him frequently as working on that floor, being middle and bottom nurse — I worked them because I ’m more in the centre, working on these floors, more clinical control being clinical lead....”*

The panel noted that Mrs Day was asked how much time she had spent with Resident A and she told Witness 1 that *“other carers would tell me that Resident A wanted to see me and I would go and see him.”*

The panel noted that Resident A told Witness 1 that *“He felt that their relationship had gone cold over the several weeks”*, which, in the panel’s view, indicated that it was more likely than not that Mrs Day spent more time with Resident A than normal for a Clinical Lead particularly as the Home has 40 beds over three floors. The panel is of the view it is very unlikely that Mrs Day would have visited all the other residents with the same level of frequency. The panel accepted Resident A’s account to Witness 1 that he had been used to considerable contact with Mrs Day but that in recent weeks, prior to the investigation, there had been very little contact between them.

The panel took into account the notes of the discussion between Witness 1 and Resident A on 1 February 2023 in which it is recorded:

“well [Mrs Day] doesn’t care for me anymore, she’s gone cold on me now”.

The panel took into account the notes of the discussion between Witness 9 and Resident A on 2 February 2023 in which it is recorded: *“he talked about [Mrs Day] used to visit him on every shift she worked and would always come and see me at 7:40 before she left to go home”.*

The panel concluded that the frequency of the visits was indicative of them being more social in nature and not directly related to Resident A’s clinical care. There was no evidence of Mrs Day doing this with other patients and when she withdrew her visits with Resident A this appeared to have had a severe impact on him. The panel found this charge proved on the balance of probabilities.

Charge 1c

‘That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

- c. Divulged personal information about yourself to Resident A [PRIVATE] and/or personal financial information, as set out in Schedule 1;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. The panel took into consideration the first incident report where Witness 3 stated:

'The only thing he spoken to me in our conversations about [Mrs Day] was that she is [PRIVATE] and that is why she was not in on a particular day. This was recent, ... either 25th or 26th of January 2023.'

The panel also had particular regard to the notes of the discussion between Witness 1 and Resident A on 1 February 2023 where it is recorded:

'[Mrs Day] [PRIVATE] and that he had a discussion with her about [PRIVATE]. [Mrs Day] had informed Resident A that [PRIVATE]. Resident A said he was amazed by this that she had [PRIVATE] and asked me if I knew all about her financial situation, to which I replied I did not. Resident A stated that he knew all about her finances.'

The panel noted the handwritten statement of Witness 8 dated 1 February 2023, which formed part of the local investigation, stated:

'we talked about women in society quite a bit and this led on to [Mrs Day]. Resident A was very aware of all of [Mrs Day]'s family and finances and expressed his concerned that she [PRIVATE]. He mentioned this on numerous occasions.'

The panel also had regard to the notes of the discussion between Witness 9 and Resident A, with particular regard to '[PRIVATE].'

The panel had further regard to the minutes of the investigation meeting held on 10 February 2023 with Mrs Day. When asked how Resident A knows all her personal information Mrs Day responded:

'we talked about general things, mentioned [PRIVATE], [PRIVATE]. We often discussed topics in the news and what is discussed on the radio — asked if I have [PRIVATE]. This is something that I would be discuss with others.'

The panel took into account the notes of the discussion between Witness 1 and Resident A on 1 February 2023 it is recorded that Resident A stated: "... *but from talking to [Mrs Day] she's "[PRIVATE]'*

Taking into consideration all of the above, the panel determined that Mrs Day had disclosed a lot of personal information about her financial status [PRIVATE] to Resident A and it determined this was very inappropriate. It noted Resident A felt a responsibility to help and protect Mrs Day. The panel was satisfied that Mrs Day's conduct in disclosing such personal information to Resident A had breached professional boundaries.

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

Charge 1d

'That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

d. Accepted or acquiesced the gift of property to be bequeathed in Resident A's will;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to the initial interview on 23 January 2023 where Witness 1 asked Mrs Day if she had been gifted anything by Resident A and it was recorded by Witness 1 that Mrs Day stated:

'[Mrs Day] stated she was aware that she was in Resident A's will and that this happened some time ago. [Witness 1] asked [Mrs Day] why this information had not been disclosed. [Mrs Day] stated that she didn't know what to do and that she feared she would be investigated....'

The panel had regard to the handwritten statement of Witness 4 which stated: *'[Mrs Day] was crying and said she had messed up. I asked why and she said Resident A had left me one of his houses in his will.'*

The panel also had regard to Witness 7's handwritten statement made during the local investigation which stated: *'Resident A told us that he had left a house or bungalow? In [PRIVATE] to M (nurse) as she had been very kind and supportive to him.'*

The panel also had regard to Mrs Day's reflective statement which stated:

'When Resident A first told me he had put me in his will I was very shocked and could not understand why this had happened. I told him I couldn't accept due to my code, that nurses couldn't accept gifts of over £5 but he insisted he had spoken to his solicitor, that it was his right to do so and there was nothing in law to say he couldn't. Resident A was quite insistent.'

The panel noted that during the discussion between Resident A and Witness 1 on 1 February 2023 it is recorded that:

'it was at this point that Resident A informed me that [Mrs Day] was "the main beneficiary of his Will. ... I then asked if he was thinking about revising his Will —

where he replied, well [Mrs Day] doesn't care for me anymore, she's gone cold on me now'

In the same meeting it is recorded that Resident A stated: '*... he had told her last year that he had left his house in [PRIVATE] to [Mrs Day].'*

The panel took account of the notes of the discussion between Witness 9 and Resident A on 2 February 2023 in which it is recorded:

'Resident A went on to talk about meeting he had with [Mrs Day] in the garden one afternoon. He asked staff to arrange an afternoon tea. He said it was a lovely day and he felt better then than he did now. On this day he stated he gave [Mrs Day] a copy of his will and said she was to be left his house [PRIVATE]. Resident A said there was probably only about [PRIVATE] in the house, but he would like [Mrs Day] to have it for her and her [children]. I asked how [Mrs Day] received the news and he said that she was stunned and speechless. He then mentioned that [Mrs Day] said that she would like him to meet her [children].'

It was noted by the panel in the investigation meeting held on 10 February 2023 that when Mrs Day was asked why she did not disclose this to her employer she replied:

'.... I was completely shocked, and I needed to investigate this myself. I told [Person C] and he said why would he do that; I have no idea. I needed to reflect and find out what it meant to us as a family and how does it affect my work and us..... I can't accept this — he is not a relation, why would someone do that. I was so shocked and I didn't know where to go with it. Also, other things came into play — I didn't think to say to anyone I had been given a property.'

Mrs Day was asked what her reaction was to the news Resident A had left her his property in his will. She replied:

'Resident A gave me a copy of the will, I was completely flabbergasted, I couldn't understand why someone would do that. I told Resident A I can't accept this; it goes against my code, I can't accept this. Resident A said [Witness 5], his solicitor had sorted it.'

The panel also took into consideration both the oral and written evidence of Witness 2. In her statement of 4 February 2023, she stated:

'during my last shift caring for Resident A disclosed to me that he had a house which he wished to leave to [Mrs Day] (nurse) in his will.'

Witness 2 also stated:

'after the conversation I took [Mrs Day] to the treatment room to ask her if this was true and if she was aware of his wishes. She said it was true, he had discussed with her about leaving his home to her in his will.'

Taking all of this evidence into consideration, the panel determined that Mrs Day was fully aware that Resident A had left a property to her in his will and that she was also aware that she should have disclosed this to the management in line with the Company Policies and Procedures and also under her obligation under the NMC Code. Mrs Day said she had been aware of the bequest of the property to her in Resident A's will since April 2022 and the panel was of the view that she had had a considerable period of time and multiple opportunities to disclose this to Witness 1.

In all the circumstances, the panel determined that Mrs Day had breached professional boundaries by accepting the bequest of a property in the will of Resident A. The panel found this charge proved on the balance of probabilities.

Charge 1e

'That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

e. Accepted the gift of shares from Resident A;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had regard to the incident report detailing the discussion on 23 January 2023 with Mrs Day where Witness 1 recorded:

'at this point [Mrs Day] informed us that Resident A had left her [PRIVATE] shares in a trust in her name. [Witness 1] asked for some understanding around these shares and Witness 9 (who was also present at this meeting) stated that each share would have a monetary value and that these can be sold.'

Mrs Day was asked what her husband had said and she replied:

'....that he was aware and had told her to sell the shares / cash them in. This has not yet happened. [Mrs Day] continued to state that she had messed up her career and that she had done what she usually does and "run away from the situation "thinking" she would deal with it when the time came". [Mrs Day] stated that she felt the situation was "all a bit surreal.'

Mrs Day went on to say that *'she was aware that she should have asked management what to do as she knows gifts of £5.00 or more should not be received.'*

The panel also had regard to the notes of the discussion held on 1 February 2023 between Witness 1 and Resident A:

'...Resident A then informed me he had given [Mrs Day] some shares.

...

Resident A was open with me and I stated I did not know much about shares and he told me a little about share values and that these could be found in The Financial Times. Resident A said 'during his romantic period' he gave [Mrs Day] [PRIVATE] shares.'

It is recorded that Resident A said he gave the shares to Mrs Day with Witness 5 as a witness. Witness 1 asked Resident A how Mrs Day responded to this kind offer. Resident A stated: *'that she said "she was very grateful and felt honoured."*

The panel had regard to meeting notes from Witness 9 and Resident A on 3 February 2023 in which it is recorded:

'I asked Resident A how he transferred the shares and he said [Witness 5] had sorted it and that [Mrs Day] would have had to have given her full name and bank account details. He didn't believe there was paper documentation and that it must all be electronically transferred.'

The panel considered the minutes of the investigation meeting held on 10 February 2023 asked Mrs Day: *'When did Resident A allocate his shares to you? She replied: "May 2022.'*

There is considerable evidence before the panel that Mrs Day accepted the gift of the shares, including her own admission and that she did not report this to management despite knowing her obligation to do so. The panel noted that Mrs Day had to be proactive in giving Resident A or his solicitor her personal information in order to receive these shares.

In all the circumstances, the panel determined Mrs Day had breached professional boundaries by accepting the gift of shares from Resident A. The panel found this charge proved on the balance of probabilities.

Charge 1f

'That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

f. Accepted a cash gift of approximately £200 from Resident A;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to Resident A's account to Witness 1 on 1 February 2023:

'Resident A informed me that he had given [Mrs Day] £200 on one occasion as he had explained to her that under different circumstances he would have wined and dined her, so told her about a lovely Japanese restaurant that do great food and wine and would set her back about £200-£300 and gave [Mrs Day] £200 cash to spend. [Mrs Day] accepted this from Resident A.'

The panel noted the minutes from the investigation interview held on 10 February 2023 where Witness 1 asked Mrs Day:

'Resident A informed me that he had given you £200 cash and said 'that under different circumstances he would have wined and dined you', and told you about a lovely Japanese restaurant that do great food and wine and would set you back about £200-£300 and gave you £200 cash to spend. Is this correct?'

Mrs Day replied: *'No I don't recall this happening.'*

Witness 1 went on to state to Mrs Day that:

'Resident A was very clear that he told you about a Japanese restaurant and he wanted you to go out for a meal as he wasn't able to take you, wasn't able to wine and dine you.'

Mrs Day replied: "I need to think about that and come back at a later point."

Witness 1 stated: *'[Mrs Day] was visibly upset at this point - the meeting was adjourned for 10 minutes to allow [Mrs Day] to regain composure.'*

Upon her return to this meeting Mrs Day was asked by Witness 1: *'why did you not think to disclose this cash gift to us?'*

Mrs Day replied: *'I don't remember.'*

The panel noted that in the document that was sent to Mrs Day giving her the opportunity to comment on the minutes of the investigation meeting, Mrs Day did not add any additional comments regarding her responses to the questions that were asked of her regarding receipt of the £200 in cash.

The panel noted that Resident A was very specific about the reason he gave Mrs Day the £200. It noted he said he would have liked to have taken her to the Japanese restaurant himself, he made reference to the cost of a meal at this restaurant which was expensive, and this is why he gave her £200 in cash.

Taking all of the above into consideration, the panel was satisfied that Mrs Day had accepted £200 in cash from Resident A and that this was in breach of professional boundaries. Therefore, it found this Charge proved on the balance of probabilities.

Charge 1g

'That you, a registered nurse:

1. Breached professional boundaries with Resident A in the following ways;

g. Accepted a gift of flowers from Resident A;'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to the notes of the discussion between Witness 9 and Resident A on 2 February 2023 it is recorded that:

'... Resident A said [Mrs Day] was stunned at the flowers and said [Mrs Day] expressed she can't really accept these it's against company policy, but there was no pressure from me, I just wanted to show my appreciation.'

The panel had regard to the minutes of the investigation meeting held on 10 February 2023 where Witness 1 asked Mrs Day if she disclosed receiving the flowers from Resident A and she replied "no."

The panel is of the view that accepting a gift of flowers may not of itself be a breach of professional boundaries. However, the panel took the view that Mrs Day's non-disclosure of the receipt of these flowers which took place on or around the time that Resident A was discussing his intention to leave her a property in his will to be contextually significant. The panel found that accepting the gift of flowers on this occasion was a breach of professional boundaries.

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

Charge 2

'That you, a registered nurse:

2. Failed to inform your Employer about the gifts particularised in Charge 1d and/or Charge 1e and/or Charge 1f and/or Charge 1g above.'

This charge is found PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to the notes of the initial investigation meeting held on 23 January 2023. Mrs Day said: *'that she was aware that she should have asked management what to do as she knows gifts of £5 or more should not be received.'*

The panel also took note of what Mrs Day said in the investigation meeting held on 10 February 2023: *'I'm aware of my nurse code of conduct but I wasn't aware of company gifting policy.'* Mrs Day also acknowledged she was aware of the QCS App. However, she stated she was not aware of the Home's gifting policy.

The panel noted from Witness 1's oral evidence that Mrs Day was mentoring NVQ students at the time so she would have been aware of the QCS App and that she would have had enhanced knowledge of procedures due to her inducting others.

Further, Mrs Day said in the investigation meeting *'I knew that if staff were offered flowers/chocolates they would ask me and I would say its ok.'*

In taking all the above into consideration the panel was of the view that in Mrs Day's position of Clinical Lead she was fully cognisant of her obligations both under the Home's policies and the NMC Code to inform her employer about the gifts particularised in charges

1d, 1e, 1f, and 1g above. Therefore, on the balance of probabilities the panel finds this charge proved in its entirety.

Charge 3

‘That you, a registered nurse:

3. Your conduct at Charge 2 above was dishonest as you knew that you were under an obligation to raise the receipt of one or more of these gifts and you chose not to do so.’

This charge is found PROVED

In reaching its decision the panel considered the oral evidence of Witness 1 and Witness 2 and all the documentary evidence before it.

The panel also had regard to the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67 which sets out the test for dishonesty.

The panel noted that Mrs Day received a number of ‘*gifts*’ from Resident A including flowers, cash, shares and the bequest of a property in his will. Mrs Day had received these gifts and was aware of the bequeathing of the property in Resident A’s will for some considerable time before they came to the attention of her line manager, Witness 1, during the investigation process.

Not only was Mrs Day fully cognisant of her obligations to disclose these to her line manager under the Home’s policies and procedures, she was by her own admission, fully aware of the NMC Code regarding gifting. It was also open to Mrs Day to have declined the gifts and not to have accepted the bequest of the property to her in Resident A’s will. The panel noted the comment by Resident A to Witness 1 in his meeting with her on 1 February 2023 where it is recorded:

'I asked him how [Mrs Day] responded to his kind gesture. Resident A replied that "she was shocked and said [Witness 1] would go mad ". Resident A said he told [Mrs Day] that this wasn't against the law and that he had checked everything through with [Witness 5]. Resident A added again at this point that "he felt that their relationship has gone cold over the several weeks and this is why [Witness 5] had spoken to him about revising his Will.'

The panel determined that Mrs Day had more than ample opportunity to have either not accepted the gifts or to have disclosed them to her line manager, Witness 1, but she chose not to do so. In the panel's view Mrs Day had not offered any plausible or credible reasons for not doing so. In Mrs Day's reflective statement the panel noted that she said:

'Reflecting back on why I had not disclosed this matter yet, I feel that I needed to be informed of any implications this had on me and my career.'

The panel determined that Mrs Day's behaviour in deliberately failing to inform her employer about the gifts would be considered dishonest by the standards of ordinary decent people. The panel found this charge proved on the balance of probabilities.

Charge 4

'That you, a registered nurse:

4. Following your suspension from the Home and being told not to involve yourself in any of the Company's activities to not contact any of the Company's customers, employee or suppliers without the permission of your manager contacted Person B, Resident A's Solicitor.'

This charge is found NOT PROVED

In reaching this decision the panel had regard to all the evidence before it. It had particular regard to the initial investigation interview held on 23 January 2023 where Mrs Day was told she had been suspended and not have any contact with staff members or residents of the Home.

Mrs Day was sent a suspension letter dated 26 January 2023 which stated:

'you must not involve yourself in any of the Company's activities nor contact any of the Company's customers, employees or suppliers without permission from your manager.'

On 27 January 2023 it came to Witness 1's attention that Mrs Day had contacted Resident A's solicitor following her suspension and Witness 1 then issued to Mrs Day a breach of suspension dated 30 January 2023. The wording in this letter differed to that of the original suspension letter. It stated: *'you were advised that one of the conditions of your suspension you must not attend work or contact anyone connected with your work.'*

There is no evidence before the panel of when or if Mrs Day had received the suspension letter dated 26 January 2023. The panel is of the view that the categories of "*customers and suppliers*" as stated in the original suspension letter were ambiguous and could be open to misinterpretation as to whether Resident A's solicitor fell within any of these categories. When Mrs Day was interviewed about this, she stated "*I felt ok to contact [Witness 5] as she is independent of the Home*".

Taking all of the above into consideration the panel determined that the NMC has not discharged the burden of proof in relation to this charge and therefore the panel finds this charge not proved.

Charge 5

'That you, a registered nurse:

5. During an interview with Person A on 23 January 2023, when asked if you had 'received anything else' from Resident A [other than the gift in their will] initially stated that you had not, which was untrue.'

This charge is found PROVED

In reaching this decision the panel had regard to all the documentary evidence before it and the oral and written evidence of Witness 1. It had particular regard to the notes of the initial investigation meeting held on 23 January 2023 which detail several questions put to Mrs Day around the gifts from Resident A. In that meeting Witness 1 asked Mrs Day if there were any other gifts that she wanted to disclose that she had received and Mrs Day denied that she had received any other gifts from Resident A.

Witness 1 said that on putting this to Mrs Day for the third time she stated: *'I told her that this was the time for complete openness and transparency as she did not want to speak to Resident A and find out from him anything that [Mrs Day] had not disclosed.'*

Witness 1 said it was only then that Mrs Day disclosed that she had received [PRIVATE] shares from Resident A. The panel also noted that Mrs Day did not disclose the gift of £200 in cash or the flowers during this interview.

The panel accepted Witness 1's evidence which is documented in the notes of that meeting that Mrs Day initially stated that she had not received anything else from Resident A.

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

Charge 6

'That you, a registered nurse:

6. Your conduct at Charge 5 above was dishonest as it was motivated to conceal the other gift/s you had received from Resident A.'

This charge is found PROVED

In reaching this decision the panel had regard to the oral evidence of Witness 1 and all the documentary evidence.

The panel noted that Mrs Day had initially denied receiving any other gifts from Resident A when asked by Witness 1. The panel was of the view that Mrs Day had clearly not told the truth initially and that such conduct would be considered dishonest by the standards of ordinary decent people.

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

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider whether the facts found proved amount to misconduct and, if so, whether Mrs Day's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's 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 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, Mrs Day's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Brahimi submitted written submissions as follows:

'Misconduct is a matter for the Panel's professional judgment. The leading case is Roylance v GMC [2000] 1 AC 311 which says:

"misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."

In Calhaem v GMC [2007] EWHC 2006 (Admin) Mr Justice Jackson commented on the definition of misconduct and he stated:

'it connotes a serious breach which indicates that the doctor's fitness to practise is impaired.'

Mr Justice Collins in Nandi v GMC [2004] EWHC 2317 (Admin) stated that:

"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 Brahimi submitted that the proven charges amount to misconduct. The following submissions are collectively made in respect of Mrs Day's conduct:

- a. *'To have breached professional boundaries in multiple ways which included money in shares and property of significant value is an act which falls short of what would be proper in the circumstances.*
- b. *To have not informed your employer that such gifts were received, was deliberate, knowing that there was a system in place to follow connotes a serious breach.*
- c. *To have firstly not informed the employer of gifts and then to be untruthful in interview for matters relating to a vulnerable resident are arguably dishonest acts that would be regarded as deplorable by fellow practitioners.'*

Mr Brahimi submitted that the following parts of the Code have been breached, but of course the panel is able to consider any other parts as it sees fit (note that it is the 2018 version of the Code that applies in this case):

- 4** *Act in the best interests of people at all times;*
- 8** *Work cooperatively;*
- 10** *Keep clear and accurate records relevant to your practice;*
- 20** *Uphold the reputation of your profession at all times;*
- 21** *Uphold your position as a registered nurse, midwife or nursing associate;*
- 23** *Cooperate with all investigations and audits;'*

Overall, Mr Brahimi further submitted that Mrs Day's actions as proven fall far *'short of what would be expected of a Registered Nurse.'* The public would expect that the profession will have staff that uphold a professional reputation. The panel may find that most in breach are that of 20 and 21 above. Mrs Day has put into question as to whether nurses can be trusted to care for vulnerable residents. Rather than declining and making such offers known to the employer as soon as possible, Mrs Day sought to take advantage of these opportunities - clearly putting the medical profession into disrepute. Such behaviour will also affect the public's trust in the medical profession.

Mr Brahimì therefore invite the panel to find misconduct.

Mrs Day did not attend and therefore the panel is not assisted with her most up to date position on insight and reform. While the panel are provided with some response in the exhibit bundle, Mr Brahimì highlighted that the panel has not heard her evidence under oath and that the reflective documents are from 2023. The panel is also invited to consider the impairment bundle provided as part of this stage.

Submissions on impairment

Mr Brahimì submitted that while current impairment is not defined in the Rules, the Fitness to Practice Guidance DMA-1, updated of 27 February 2023, states the following on how to decide on impairment:

“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”.

Mr Brahimì submitted that the panel may be assisted by the questions posed by Dame Janet Smith in her Fifth Shipman Report, as endorsed by Mrs Justice Cox in the leading case of *Council for Healthcare Regulatory Excellence v (1) NMC (2) Grant* [2011] EWHC 927 (Admin):

“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:

- (i) Has in the past, and/or is liable in the future to act as so as to put a resident or residents at unwarranted risk of harm;*

- (ii) *Has in the past, and/or is she liable in the future to bring the profession into disrepute;*
- (iii) *Has in the past, and/or is she liable in the future to breach one of the fundamental tenets of the profession;*
- (iv) *Has in the past, and/or is she liable in the future to act dishonestly.”*

Further, as stated at paragraph 74 of *Grant*, the panel should:

‘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.’

Mr Brahimi submitted that Mrs Day is impaired and that all limbs of *Grant* are engaged in this case; however, the panel are at liberty to consider any ground.

Mr Brahimi submitted that the first limb is engaged as a result of Mrs Day putting Resident A at unwarranted risk of harm. The panel has accepted the evidence in respect of the charges proven and it follows that Resident A was put at risk of harm, but not limited, to where Mrs Day build up a relationship with Resident A, opening up about her personal life and then being gifted items led the Resident A to feel “*romantically*” involved with her. The concern here is that there is a risk of emotional harm because of the way Mrs Day has engaged with the resident. Mr Brahimi submitted that had it not been for Mrs Day engaging in such a way and also failing putting an end to matters early, it is highly unlikely that any such gifts would have been given and it would have also prevented emotional harm coming to Resident A.

Mr Brahimi submitted that the second limb is engaged as a result of Mrs Day's behaviour, as found proven, which plainly brings the profession into disrepute. He submitted that this case involves a number of items being gifted to Mrs Day and arguably items that only escalate in nature. From flowers, to £200, to [PRIVATE] shares to property [PRIVATE]. It would be obvious to any nurse that £200 was significant, let alone shares and property. He submitted that given these matters happened early to mid-2022 and that Mrs Day did not, reluctantly, engage or report these matters until 2023 this is a sign that she intended to remain dishonest until she was caught out. The Code has been breached in multiple areas and this will plainly bring the medical profession into disrepute.

The third limb is engaged, where Mrs Day has plainly breached fundamental tenets of the profession in numerous areas of the Code of Conduct as referred to above, but in particular:

*'20.1 and 20.2 Uphold the reputation of your profession at all times
21.3 Uphold your position as a registered nurse, midwife or nursing
associate
23.1 Cooperate with all investigations and audits'*

The fourth limb of *Grant* is engaged as a result of Mrs Day having been found proven of acting dishonestly.

As further stated at paragraph 74 of *Grant*, the panel should:

"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."

Mr Brahimi submitted that there is a serious departure from the standards expected of a nurse and that the behaviour is incompatible with ongoing registration. The panel should consider impairment on the grounds of public protection and otherwise in the public interest.

Mr Brahimi submitted that there is a risk of emotional harm in this case. Mrs Day built up a relationship with Resident A and then cut off communication. Whilst the communication was cut as a result of the Home requesting this, the point is that it would not have come to that stage had it not been for Mrs Day engaging in misconduct in the first place.

Mr Brahimi further submitted that emotional harm is just as damaging, if not sometimes more, than physical harm. He submitted that this was a resident that was supposed to be cared for [PRIVATE]. Resident A's realisation of what was happening may well have added to any pain and suffering that he was already going through. Mr Brahimi submitted that this case provides a strong demonstration of there being a risk of repetition where there are a number gifts and two occasions of dishonesty by Mrs Day. He emphasised that it took at least three attempts in interview to get Mrs Day to disclose what conduct took place.

Mr Brahimi further submitted that the greater concern in this case is the lasting impression that Mrs Day's conduct will have on the nursing profession. There are three areas of concern here, which escalate in seriousness. The first is the number of incidents that Mrs Day breached professional boundaries by accepting the gifts and the extra time spent with Resident A. The second is the dishonest behaviour of not disclosing to her employer that such gifts were awarded. He submitted that the most fundamental is the third area the demonstration of being untruthful when being asked to cooperate in an interview as part of an investigation.

Mr Brahimi submitted that these charges relate to the most serious category of misconduct, namely dishonesty and that a reasonable member of public learning of these incidents would find it difficult to reinstate trust in the medical profession where dishonesty

is often an attitudinal problem, and difficult to remediate. The repetition of these incidents has taken the conduct beyond an isolated incident and into a territory of pattern and liability to act in the same way in the future. He submitted that the public would be greatly and adversely affected once they learn of these proven incidents. There will be less trust in the medical profession, particularly where the resident involved was one of a vulnerable nature. As a result of Mrs Day's abuse of position, Mr Brahimi submitted that the honesty and integrity of the medical profession has been challenged and evidently been put into disrepute.

As such Mr Brahimi invite the panel to find that Mrs Day is currently impaired.

The panel accepted the advice of the legal assessor which included reference to a number of relevant judgments. These included: *Roylance v General Medical Council (No 2)* [2000] 1 A.C. 311, *Nandi v General Medical Council* [2004] EWHC 2317 (Admin), and *General Medical Council v Meadow* [2007] QB 462 (Admin).

Decision and reasons on misconduct

The panel first considered whether Charges 1a, 1b and 1c amounted to misconduct.

The panel found that Mrs Day was giving Resident A extra attention which led to his perception that he was in a '*romantic relationship*' with Mrs Day. When Mrs Day withdrew her attention, this caused him actual emotional harm. The panel considered this to be particularly egregious behaviour as Resident A was a vulnerable resident [PRIVATE].

The panel had also determined that Mrs Day breached professional boundaries with Resident A by spending a disproportionate amount of time with him, attending the Home outside her normal work hours and by divulging her personal and financial information to him. Mrs Day's behaviour misled Resident A into what he thought was a romantic relationship and, most likely, led to him bequeathing her the property in his will and giving

her the other gifts. Mrs Day's pattern of behaviour continued over a considerable period of time. This was far from acting in the best interests of Resident A.

The panel was of the view that Mrs Day's conduct in relation to Charges 1a, 1b, and 1c fell significantly short of the standards expected of a Registered Nurse, and amounted to breaches of the following sections of the Code:

'4. Act in the best interests of people at all times.

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;

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

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers.'

The panel then went on to consider whether Charges 1d,1e, 1f, and 1g amounted to misconduct.

The panel considered the bequest and the gifts Mrs Day received from Resident A were a direct result of the behaviour she portrayed to him which led him to perceive that they were '*romantically involved*'.

The panel noted it is absolutely clear in the Home's policies and procedures of the process to follow with regard to accepting gifts, and therefore Mrs Day was required to alert her employer of the offer on any gifts. Further, the NMC Code is clear that all but the "*most trivial gifts*" should be refused.

The panel was of the view that Mrs Day's conduct in relation to Charges 1d, 1e 1f, and 1g fell significantly short of the standards expected of a registered nurse and amounted to breaches of the following sections of the Code:

'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;

20.6 stay objective and have clear professional boundaries at all times with people in your care (including those who have been in your care in the past), their families and carers; and

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:

21.1 refuse all but the most trivial gifts, favours or hospitality as accepting them could be interpreted as an attempt to gain preferential treatment; and

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.'

The panel next considered whether Charges 2, 3, 5, and 6 amounted to misconduct.

The panel determined that there was a pattern of dishonest conduct on the part of Mrs Day in failing to notify management of the gifts she had received from Resident A. Further, Mrs Day had again been dishonest during the initial investigation when she stated that she had not received anything other than the bequest of the property from Resident A which was not true. The panel noted that Mrs Day maintained a level of dishonesty throughout the whole process.

The panel was of the view that Mrs Day's conduct in relation to Charges 2, 3, 5, and 6 fell significantly short of the standards expected of a registered nurse and amounted to breaches of the following sections of the Code:

'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; and

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.'

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that, as Clinical Lead, Mrs Day was in supervisory position and a mentor to new and junior staff. She should have been acting as a role model and she failed to do so. In that role she should have been emulating the standards of the Code and she did not do so.

The panel found that Mrs Day's conduct in relation to all of the charges fell seriously below the standards expected of a registered nurse and amounted to misconduct.

Decision and reasons on impairment

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

In coming to its decision, the panel had regard to the Guidance on Impairment set out in the NMC's Fitness to Practise Library, updated on 27 February 2024, 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision, particularly noting paragraph 74 quoted above.

The panel considered the test set out in *Grant* found that all four limbs of *Grant* are engaged.

The panel considered Mrs Day's reflective statement prepared in March 2023 and found it to be seriously lacking insight regarding both the seriousness of her behaviour and its impact on Resident A, her colleagues, the nursing profession and the NMC as her regulator. The statement was predominantly focused on herself and the impact the investigation had on her and her career.

Regarding the charges found proved and Mrs Day's reflective statement, the panel was of the view that the nature of her misconduct, together with her lack of insight and remorse, were indicative of Mrs Day having a deep-seated attitudinal problem.

The panel noted that Mrs Day has not provided an up-to-date reflection or any other information about her current circumstances.

In reaching its decision on current impairment the panel took the following into account:

- The vulnerability of Resident A;
- The sustained pattern of dishonesty by Mrs Day in relation to the bequest and the gifts;
- Mrs Day lied during the initial investigation meeting;
- The length of time over which this misconduct took place;
- The seniority of Mrs Day's position as a Clinical Lead with all the responsibilities therein; and
- Mrs Day's lack of insight and remorse in respect of the impact on Resident A, her colleagues, the nursing profession, and the NMC as her regulator.

In light of the above, the panel decided that a finding of impairment is necessary on the grounds of public protection.

The public expect nurses to be honest and trustworthy and adhere to the Code and local policies and procedures to ensure the safety of people in their care. Members of the public would be deeply concerned with the behaviour of Mrs Day. Therefore, the panel concluded that a finding of impairment was also required on public interest grounds to uphold and maintain proper professional standards and confidence in the profession and the NMC as its regulator.

Taking all of the above into consideration the panel found that Mrs Day did not practise kindly, safely or professionally as she displayed significant unprofessional behaviour over a sustained period of time that resulted in harm to a vulnerable patient and has damaged the reputation of the profession.

Having regard to all of the above, the panel determined that Mrs Day's fitness to practise is currently impaired on both public protection and public interest grounds.

Sanction

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

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case and had careful regard to the Sanctions Guidance (SG) published by the NMC. The panel accepted the advice of the legal assessor.

Submissions on sanction

Mr Brahim informed the panel that in the Notice of Hearing, dated 4 July 2024, the NMC had advised Mrs Day that it would seek the imposition of a striking-off order if it found Mrs Day's fitness to practise currently impaired. He submitted that given the facts found proved a striking-off order is the only appropriate sanction as the failings identified are a significant departure from the fundamental behaviours expected of a registered nurse.

The panel noted that Mrs Day has made no submission on sanction.

Decision and reasons on sanction

Having found Mrs Day's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case. The panel has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The panel had careful regard to the SG. The decision on sanction is a matter for the panel independently exercising its own judgement.

The panel took into account the following aggravating features:

- Abuse of a position of trust
- Breaching of the professional duty of candour
- Lack of insight into failings
- Evidence of deep-seated attitudinal concerns, including repeated dishonesty
- Sustained pattern of behaviour over a prolonged period of time

The panel noted what Mrs Day stated about her personal circumstances at the time as set out in her written reflection of March 2023 but concluded that it was unable to place significant weight on this as [PRIVATE] and she was not before the panel to answer questions. Further Mrs Day has not submitted anything further to the panel. Therefore, the panel concluded that there are no mitigating factors.

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

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, as well as the public interest concerns, an order that does not restrict Mrs Day's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Day's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Day's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. The panel noted that there has been no clinical misconduct which could suitably be addressed by conditions of practice. Further the panel was of the view that the deep-seated attitudinal concerns which included repeated dishonesty are not something that can easily be remediated. Furthermore, the panel concluded that the placing of conditions on Mrs Day's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that a 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 considered that Mrs Day's behaviour spanned a significant period of time involving a significant breach of trust, there was evidence of deep-seated personality or attitudinal problems, Mrs Day showed little insight, and there was a significant risk of her repeating the behaviour. The panel considered that Mrs Day's actions caused emotional harm to Resident A, and that she was dishonest over a sustained period of time in an attempt to obtain personal financial gain for herself. Therefore, the panel considered that none of the above factors are present and that a suspension order would not be appropriate.

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse. The panel determined that the serious breach of the fundamental tenets of the profession evidenced by Mrs Day's actions is fundamentally incompatible with Mrs Day 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?*

Mrs Day's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Mrs Day's actions were very serious and to allow her 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 Mrs Day's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to protect the public, 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 Mrs Day in writing.

Interim order

As the striking-off order cannot take effect until the end of the 28-day appeal period, the panel has considered whether an interim order is required in the specific circumstances of this case. It may only make an interim order if it is satisfied that it is necessary for the protection of the public, is otherwise in the public interest or in Mrs Day's own interests until the striking-off sanction takes effect. The panel heard and accepted the advice of the legal assessor.

Submissions on interim order

The panel took account of the submissions made by Mr Brahim. He submitted that an interim order is necessary to protect the public and is otherwise in the public interest. He submitted that an interim suspension order of 18 months is required to provide public protection during any appeal period.

Decision and reasons on interim order

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

The panel concluded that an interim conditions of practice order would not be appropriate or proportionate in this case, due to the reasons already identified in the panel's determination for imposing the substantive order. The panel therefore imposed an interim suspension order for a period of 18 months to provide protection during any appeal period.

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

That concludes this determination.