

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

Substantive Hearing

**Tuesday, 13 February 2024 – Friday, 15 February 2024
Monday 26 February 2024 – Thursday 29 February 2024
Monday, 2 September 2024 – Thursday, 5 September 2024
Monday, 9 September 2024 – Wednesday, 11 September 2024**

Virtual Hearing

Name of Registrant: Karla Sarah Mullan

NMC PIN 0510239N

Part(s) of the register: RNA: Adult nurse, level 1 (15 February 2006)

Relevant Location: Londonderry and Strabane

Type of case: Misconduct

Panel members: Shaun Donnellan (Chair, Lay member)
Anna Ferguson (Registrant member)
Linda Pascall (Registrant member)

Legal Assessor: Sean Hammond

Hearings Coordinator: Max Buadi (13 – 16 February 2024)
Muminah Hussain (26 – 29 February 2024)
Stanley Udealor (2 – 5, 9 – 11 September 2024)

Nursing and Midwifery Council: Represented by Tom Hoskins, Case Presenter

Ms Mullan: Present but not represented

Facts proved by way of admission: Charges 2(a), 2(b), 7, 8(a) and 8(b)

Facts proved: Charges 3, 4a, 4b, 5a, 5b, 5c, 6, 9 and 11

Facts not proved: Charges 1 and 10

Fitness to practise: Impaired

Sanction:

Striking-off order

Interim order:

Interim suspension order (18 months)

Day 1

On Day 1 of the hearing, you told the panel that had instructed a solicitor to represent you but could not afford for the solicitor to be present for the entire duration of the hearing, which you had originally understood to be taking place over a four-week period. You informed the panel that on 4 January 2024 you had requested a hearing timetable from the NMC so that your solicitor could arrange to be present at the hearing on the days the NMC witnesses were due to give evidence. You stated however that you had only received that information this morning when Mr Hoskins, on behalf of the Nursing and Midwifery Council (NMC), sent you, through the Hearings Coordinator the hearings timetable. You told the panel that you had tried to contact your solicitor today, but you were unsuccessful as you were told she was in court attending to another matter. You told the panel that you felt unable to cross examine the NMC witnesses yourself and therefore wanted to be legally represented for that part of the hearing.

In addition, there were also discrepancies in relation to the documentation you had sent to the NMC. The panel had not yet been provided with any of your documentation. You stated that you had sent the NMC a bundle of over 400 pages in July 2023. Mr Hoskins and the legal assessor had received a bundle of 149 pages while the Hearings Coordinator had a bundle of 273 pages.

The panel therefore provided you with the opportunity to liaise with the Hearings Coordinator to ensure that the panel had the correct documentation and to contact your solicitor.

After liaising with the Hearings Coordinator, you were content with the panel receiving both the 149 page bundle and the 273 page bundle. You stated that you had missed a call from the solicitor due to liaising with the Hearings Coordinator but would endeavour to try and get in contact with her.

Mr Hoskins responded to some of the matters raised. He submitted that the two bundles the panel now have were prepared in advance of the hearing and provided to you so you could decide what evidence you wish to admit. He submitted that the NMC is not in a position to do this on your behalf and until you decide what documentation you wish to adduce, the NMC cannot put it before the panel.

Mr Hoskins informed the panel that the entirety of the 149 page bundle is in the latter half of the 273 page bundle. He also informed the panel that considerable efforts have been made by the NMC to find additional information you say you have sent. He submitted that other than what was sent in July 2023, no additional documents have been found. He further submitted that if there is more information you wish to admit to the panel then you are free to do so, subject to him viewing them.

With regards to the matter of the hearings timetable, Mr Hoskins submitted that it would be impossible to give specific times for the witnesses because he would not know how long you or your representative would wish to question those witnesses. He submitted that the hearing timetable provided to you this morning is already out of date due to the delay today.

Mr Hoskins submitted that the suggestion that you have been disadvantaged by not having the hearings timetable is without merit. He submitted that the Notice of Hearing is clear to the extent of the dates and times the hearing would start and any issues with representation could have been sorted before the start of the hearing.

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

At the close of Day 1, the panel directed you to get written confirmation from your solicitor in order to specify and confirm what days she is going to be present and represent you. The panel was provided with the a copy of the 273 page registrant response bundle.

Day 2

At the outset of Day 2 of the hearing, you informed the panel that despite making phone calls and sending emails you have not been able to speak directly to your solicitor. You said, *“I have represented myself before so I am not being difficult, but I cannot cross examine these witnesses”*. You then asked if the hearing could be adjourned.

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

During the application to adjourn the hearing, [PRIVATE]. The legal assessor invited the panel to consider whether those parts of the application be in private.

Mr Hoskins indicated that he supported the application.

The panel directed that those parts of the transcripts be marked as private and that any further references to those matters should be hearing in private, pursuant to Rule 19 of the ‘Nursing and Midwifery Council (Fitness to Practise) Rules 2004’, as amended (the Rules).

Having heard references to [PRIVATE], the panel determined to hold those parts of the application in private.

Your application for an adjournment

Under Rule 32 (2) of the Rules you made an application to adjourn this hearing. You informed the panel that you were unable to contact your solicitor. You provided the panel with an email, dated 14 February 2024, which showed that you had tried to email the law firm of your solicitor. You said that you need to be represented because you do not feel confident cross examining the NMC witnesses by yourself. You also stated that you would need representation to assist with the NMC’s proposed application for special measures pertaining to two of the NMC’s witnesses. You stated that you did not appreciate until

yesterday that the NMC intended to make an application to admit the evidence of two witnesses as hearsay and that you would be required to respond to this legal argument.

You said that you wanted an adjournment so that your solicitor could be present to cross examine the witnesses and respond to the legal arguments on your behalf. You stated that it would be unfair if you had to proceed without a legal representative to support you.

In response to panel questions, you stated that you were a member of UNISON in 2019, but when you were suspended you cancelled your membership. You said that you represented yourself during at an NMC hearing when an interim conditions of practice order was imposed. You also said that you contacted the Royal College of Nursing (RCN), but they could not represent you because you were not member when the alleged incidents occurred, and the allegations occurred over four years ago. You confirmed that you are not currently a member of a trade union.

[PRIVATE]

You stated that you did not feel supported and that you could meaningfully engage with the hearing without legal representation.

You also confirmed that you have made enquires with other potential solicitors and barristers. You said that you would require an adjournment for a few weeks.

Mr Hoskins response to the application

Mr Hoskins opposed the application on the basis that there is injustice caused to the NMC.

Mr Hoskins provided the panel with a chronology of the case. He submitted that some of the allegations date back to 2017 but most of them are between 2018 and 2020. He informed the panel that a referral was received in late 2020 and then the case was first listed for a substantive hearing in October 2023.

Mr Hoskins submitted that you sent an email to the NMC, dated 29 September 2023, stating that you have no support, you cannot afford legal representation and are [PRIVATE].

Mr Hoskins informed the panel that in an email dated 20 September 2023, you stated that your solicitor could not commit to attending as there are no specified times and dates. Mr Hoskins submitted that the NMC Case officer responded the same day stating that she is not clear what the “specified times and dates” is referring to as the dates and times of the hearing in October are outlined in the Notice of Hearing. The NMC case officer confirmed the hearing will start on 30 October 2023 at 09:00 and at the same time everyday thereafter.

Mr Hoskins submitted that on 29 September 2023, the NMC exhibit bundle and the witness statement bundle were provided to you. He submitted that you were asked if you were available for a pre-meeting to discuss witnesses and issues relating to special measures that have been requested.

[PRIVATE]

[PRIVATE]

Mr Hoskins submitted that the NMC Case officer stated that you could excuse yourself at these points of the hearing but that would mean you would not be able to cross examine the witnesses which could place you at a disadvantage.

Mr Hoskins submitted that you agreed to hear the witnesses but then asked for the date and times of each witness. On 5 February 2023, the NMC Case officer sent you an email containing NMC hearing materials including the ‘batting order’ for the NMC witnesses.

Mr Hoskins reminded the panel that your application to adjourn is solely on the grounds that you want to be legally represented. [PRIVATE].

Mr Hoskins submitted that this case relates to a series of “fractured relationships” in relation to the NMC witnesses so it will be a difficult case for you to cross examine them on your own. He submitted that many registrants face these proceedings unrepresented and with guidance provided by himself, the panel and the legal assessor are able to cross examine witnesses.

Mr Hoskins further submitted that he opposes the application due to the inconvenience that would be caused to the witnesses who were originally scheduled to give evidence in October 2023. He also submitted that the witnesses are going to be asked to recall specific factual matters and it is likely the quality of the evidence will deteriorate if the hearing is postponed.

Mr Hoskins also submitted that you have raised a concern in your correspondence to the NMC about how long the case had taken and the effect it has had on you. However, he submitted that you have not put any medical reason before the panel as to why the hearing should not proceed.

Mr Hoskins submitted that it is not justifiable to adjourn due to not being provided with a hearing timetable which is subject to change. He submitted that it cannot in any way compromise your preparation, including acquiring legal representation when you were made aware that there were issues of legal representation availability back in September 2023.

Mr Hoskins invited the panel to proceed with the hearing.

[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE]

[PRIVATE]

The panel heard and accepted the advice of the legal assessor. He referred the panel to the NMC guidance entitled, “When we postpone or adjourn hearings” (reference: CMT-11).

Prior to determining your application to adjourn, the panel invited Mr Hoskins to find out the availability of the NMC’s witnesses for the remainder of the scheduled hearing dates (namely 26 to 29 February 2024).

Mr Hoskins made the appropriate enquiries and confirmed to the panel that the witnesses would be available between those dates. Mr Hoskins provided the panel with a suggested hearing timetable that would enable those witnesses to complete their evidence within the time available. Mr Hoskins submitted that if the panel was minded to adjourn the hearing until 26 February 2024, then the panel should consider making directions to ensure that the hearing proceeded without any further delay. Mr Hoskins provided the panel with suggested directions.

You told the panel that if the hearing was adjourned until 26 February 2024, you had no objection to the proposed directions.

Panel’s Decision

The panel decided to refuse your application to adjourn the case generally but decided that it would be fair and in the interest of justice to adjourn the hearing until 26 February 2024.

In reaching this decision the panel were mindful of the need to ensure fairness to all parties.

There is a public interest in considering fitness to practise allegations promptly. The panel noted that parts of this case are alleged to have occurred between 2017 and 2020. The first time the hearing had been scheduled was 30 October 2023. That hearing was postponed by a panel Chair, at your request, [PRIVATE]. The panel took into account that a further adjournment at this stage would likely delay the hearing until mid-2024.

The panel bore in mind that any further delay could potentially adversely affect witness memories of the allegations, although it noted that there was already a long time period between 2017 to 2020 which may have already impacted upon witness recollection.

The panel also took into consideration that if you were to cross examine the NMC witnesses yourself, that given the history between you and them, it may not be conducive to the panel receiving the best evidence from them.

The panel considered the inconvenience to the NMC witnesses. This was the second time that they had made themselves available to give evidence remotely. [PRIVATE].

Fairness to you was also a factor, you had clearly explained that the thought of even facing the witnesses, [PRIVATE], you were quite clear that you would actually be unable to conduct any meaningful cross examination and stated several times it was beyond your ability and that this was why you needed legal representation.

The panel was persuaded that you believe that you have legal representation, but that your solicitor was unable to attend this hearing. The panel noted that in an email dated 4 January 2024 you had sought to obtain precise dates and times of when the witnesses would give evidence so that your solicitors could attend on those dates to cross examine. The panel noted that you only received that information on the morning of the first day of

the hearing. However, the panel were of the view that it was your responsibility to ensure that your legal representative was present at the hearing. The panel noted that witnesses will be scheduled to give evidence, but also understand that this is a fluid situation and it is difficult to predict witness testimony lengths precisely. The panel though took the view that your legal right to a fair hearing meant in this case that they should do all they can to try and facilitate your request to secure legal representation.

The panel recognised the fine balance between the competing factors and sought to achieve a fair hearing without injustice to any party.

Having regard to all these matters, the panel decided to refuse your application to adjourn the case generally but decided that it would be fair and in the interest of justice to adjourn the hearing until 26 February 2024.

The panel decided, that in order to ensure the efficient management of the resumed hearing on 26 February 2024 to make the following directions, which shall not be altered without a formal application being made by the party seeking alteration orally to the panel after 26 February 2024:

1. *“The hearing is adjourned until 10:00 on 26 February 2024.*
2. *Neither the Registrant nor the NMC are permitted to provide further evidence to the Panel beyond the following documents until the time the hearing reconvenes, at which point a further application will need to be made to adduce further evidence explaining in no more than 10 minutes why the documentation to be adduced is a) relevant and b) fair:*
 - a. *Exhibit 1: NMC witness bundle, numbering 33 pages.*
 - b. *Exhibit 2: NMC exhibit bundle, numbering. 94 pages.*
 - c. *Exhibit 3: Registrant’s response bundle, numbering 273 pages.*
 - d. *Exhibit 4: Evidence Matrix.*

- e. *Exhibit 5: Schedule of Anonymity.*
 - f. *Exhibit 6: Charge.*
3. *The Registrant is, by 10:00 on the 23 February 2024, to share the name, telephone number and email address of any representation or representative she has instructed to represent her for the hearing between 26-29 February 2024. Alternatively, if she is not proposing to be represented this must also be confirmed in writing by this date and time. [The email address of the NMC Case Officer was stated here]*
4. *The NMC, by 12:00 on 23 February 2024, are to serve on Ms Mullan and/or any representative identified pursuant to paragraph 3, above, the following written documents:*
- a. *A written opening address;*
 - b. *A written application for special measures;*
 - c. *A written application for parts of the hearing to be in private;*
 - d. *A written hearsay application;*
5. *The listing from the 26 February 2024 to 29 February 2024 is preserved as an effective hearing:*
- a. *Each day of that hearing, the Committee will sit from 10:00 to 16:00 with a break for lunch between 13:00-14:00. The hearing is expected to be effective during these times unless otherwise ordered. The time prior to 10:00 each day, and after 16:00, is for the parties to conclude all discussions and the NMC to have completed any contact required of the witnesses and the Panel to have completed any pre-hearing reading.*
 - b. *The Panel will be hearing from the witnesses in the following order and with the following times and dates, which cannot be amended:*

i. 26 February 2024:

- 1. Between 10:00-11:30: Rule 19 Application and Special measures application by the NMC. Any decision of the panel will be oral and provided in writing at a later date. NMC opening.*
- 2. Between 11:30 and 13:00: [Witness]*
- 3. Between 14:00 and 16:00: [Colleague 2].*

ii. 27 February 2024:

- 1. Between 10:00 and 13:00: [Colleague A] (from out of the jurisdiction)*
- 2. Between 14:00 and 16:00: [Ms 1]*

iii. 28 February 2024:

- 1. Between 10:00 and 13:00 – [Manager 1]*
- 2. Between 14:00 and 16:00 – Response to hearsay application.*

iv. 29 February 2024:

- 1. Currently left free pending applications in respect of the above.*
- 6. Should the Registrant wish to show the above witnesses any documentation not included in their respective NMC statements (referred to as Exhibit 1 at paragraph*

2, above) or the NMC exhibit bundle (referred as Exhibit 2 at paragraph 2, above), she must provide to the NMC at the email address provided at paragraph 3, above, by 09:00 on the working day before each witness is called to give evidence as outlined at paragraph 5, above:

- a. the page reference numbers within the pdf of the Registrant's response bundle (referred to at paragraph 2, above).

The Panel direct that any such documentation should be provided to the witnesses with sufficient time for them to consider any such documents.”

Renewed (second) application to adjourn

On the morning of 16 February 2024, before the panel had handed down its written decision in respect of your application to adjourn, it received an email from you in which you stated:

“I have made numerous enquiries today to reach out to other legal teams for support , all are coming back to me saying they need more time and 2 weeks is unrealistic time frame to prepare for final hearing.

I have explained circumstances to all parties I have contacted and will try again tomorrow.

Is there any possibility hearing can be postponed to middle of March.

Will you let the panel know this is feedback I am receiving and I can send numerous email I have sent.

[The solicitor] has court on mornings of new proposed dates so I don't think she is suitable to represent as I need whole days cover and support.”

The panel treated your email as a renewed application to adjourn the hearing generally.

The panel invited submissions from both yourself and Mr Hoskins.

You informed the panel that you have found another barrister who can represent you, however he told you that he would need more time to go through the bundles. You said that you wanted the hearing to go ahead on 26 February 2024 but despite your efforts you had been unable to secure legal representation for this date.

Mr Hoskins objected to your application. He reminded the panel of the chronology of this case. He submitted that a further adjournment would cause injustice to the NMC. He submitted that although you requested an adjournment until March 2024 there was no certainty that the NMC could accommodate the hearing on those dates and the case may therefore be adjourned for a much longer period. He submitted that this may not only affect the quality of the witnesses' evidence, [PRIVATE], and that there was a very real risk that they would disengage with the process. He submitted that to have legal representation is preferable but it is not the basis for an adjournment. He referred the panel to an email from you to the NMC, dated 20 September 2023, in which you explained that your legal representative was unavailable as she could not commit to a three-week hearing or any dates in February 2024. Mr Hoskins submitted that the problems that have arisen, in relation to your legal representation at this hearing, were foreseeable. He submitted that as there would be injustice to the NMC the panel should refuse your application.

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

The panel decided to refuse your application. Whilst the panel acknowledged that you have continued to make efforts to secure legal representation, it considered this to be your responsibility and from the chronology provided to it, the panel was satisfied that you have been aware of the unavailability of your current solicitor for some time. The panel was of the view that your further submissions in support of your renewed application to adjourn did not undermine its previous decision to adjourn this matter to 26 February 2024.

The panel further decided that the directions set out above should continue to apply.

Application to hear part of the proceedings in private

At the outset of the hearing beginning 26 February 2024, the panel received an application from Mr Hoskins to hear part of the proceedings in private in relation to Patient A and your private life.

You indicated that you did not oppose the application.

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

The panel determined that the parts of the hearing related to Patient A and your private life should be heard in private.

Charges

That you, a registered nurse:

1. Accessed the medical records of Patient C when they were not a patient under your care on 28 June 2017.
2. Accessed the medical records of Patient A without clinical justification on:
 - a. 26 September 2018.
 - b. 7 November 2018.
3. Disclosed to Person 1 on 21 March 2019 that Patient A [PRIVATE]
4. In relation to accessing the documents of Patient A on 19 June 2019:
 - a. Implied that Colleague A had only asked you about whether you had accessed the paper records of Patient A at the meeting on 27 March 2019 when she had asked about both the paper and electronic records.

- b. Stated to Colleague A that you had accessed the records at or after 3pm when the records were accessed before that time.
5. Accessed the medical records of [PRIVATE], Patient B, when she was not under your care on:
 - a. 9 October 2019.
 - b. 11 October 2019.
 - c. 5 November 2019.
6. On 8 January 2020, gripped Colleague 2's arm and/or tried to pull her into a room.
7. On 15 May 2020, answered 'no' when asked by Pulsecare Agency whether you were under investigation.
8. On 29 July 2020 signed the following to confirm that you were under investigation:
 - a. Minimum pre-engagement checks document.
 - b. Statement of eligibility to work.
9. Your actions at charge 4a were dishonest in that you deliberately sought to suggest that you had not been asked about the electronic records when you had been.
10. Your actions at charge 4b were dishonest in that you deliberately sought to represent that you had a legitimate reason for accessing Patient A's records.
11. Your actions at charges 7 and/or 8 were dishonest in that you deliberately sought to represent that you were not under investigation by the NMC and/or the Western Health and Social Care Trust.

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

Background

You were referred to the NMC on 8 July 2019 by Patient A – [PRIVATE]. The concerns raised in the referral relate to the time when you were working as a Band 6 tissue viability nurse at Altnagelvin Hospital (the Hospital), at Western Health and Social Care Trust (the Trust).

On 21 March 2019, you allegedly revealed personal and sensitive information about Patient A to Person 1. On 22 March 2019, Patient A complained to the Trust that you had told Person 1 this private information, and she believed you had accessed her private medical records to learn this. On 27 March 2019, Colleague A had a discussion with you regarding this allegation and you denied it.

An audit was carried out in relation to Patient A's allegation, and on 15 April 2019, Colleague A received the results of the audit from the complaints officer. The audit showed that on 26 September 2018 and 7 November 2018, you accessed Patient A's medical records. Colleague A told you the results of the audit on 15 May 2019, and you told her that you thought she had meant paper records when you had denied accessing the records of Patient A.

You informed Colleague A that you had accessed the electronic records to obtain Patient A's phone number as on both occasions [PRIVATE].

You had a formal hearing with the Trust on 18 November 2019 for accessing Patient A's records, and on 19 November, were given a final written warning for your conduct from the Trust.

On 9 October 2019, 11 October 2019 and 5 November 2019, you allegedly accessed the records of Patient B. You informed Colleague A that you had permission to access the records of Patient B. It is alleged that you were not clinically responsible for Patient B's care and had no right to access them.

In January 2020, strikes were called by a number of nursing unions and these were on different days for different nursing unions. You were in a different union from Colleague 2 and Colleague 3. On 9 January 2019, Colleague 2 and Colleague 3 remained in the office answering emergency calls only, as advised by Manager 1. Your union had not advised strike action that day and you were covering wards. At 11:30am, you returned to the office and were allegedly aggressive towards Colleague 2, challenging the dressing she had

recommended for a patient. You were allegedly hostile and said you did not like Colleague 2's attitude on the phone. Colleague 2 advised you to leave her alone. You allegedly waited outside the bathroom opposite the office for Colleague 2, grabbed her arm and attempted to drag her to the copy room. Colleague 2 refused, Colleague 3 shouted for you to let go. You let go and left. Colleague 3 took a photograph of Colleague 2's arm.

Colleague 2 reported this incident to Manager 1 who investigated the matter. Manager 1 offered you an alternative roles to diffuse the situation which you were not able to accept due to your personal circumstances. [PRIVATE]. Following your return to the Hospital, you resigned on 18 August 2020. Consequently, the Trust were unable to pursue the disciplinary issues further but had told you all references would be honest and factual and would include you were under investigation when you resigned.

A further audit relating to Patient C showed that you had accessed their medical records. There was no record of the reason for this access.

In May 2020, you applied to Pulsecare Agency (the Agency). Person 1 interviewed you and saw your application and references. Both your application and references said you had not been subject to a disciplinary process or an NMC referral. However, when the Agency attempted to place you at the Trust, Person 1 was advised that you had resigned while under investigation. When Person 1 questioned you, you replied that you had resigned as it was not relevant. You did not work for the Agency after this.

Application for special measures for Person 1 and Colleague 2

Mr Hoskins submitted that the nature of the special measures if that you turn your camera off whilst Person 1 and Colleague 2 give their evidence. He informed the panel that both of these witnesses have complained of intimidation, and have indicated that the quality of their evidence will be improved if they do not see you whilst they are giving evidence.

Mr Hoskins submitted that there is no prejudice to you. In regard to Person 1, Mr Hoskins informed the panel that she would benefit from a special measure because she feels that you can be quite volatile and therefore unpredictable.

Mr Hoskins asked the panel to bear in mind the tenor of the witness evidence Colleague 2 gives about your behaviour. Mr Hoskins informed the panel that the allegation in charge 1 amounts to battery, and came at a time of heightened emotion. At the time, Colleague 2 had said she had found it upsetting.

You informed the panel that you have never intimidated these witnesses. You said that you have not seen Colleague 2 in over two years, and Person 1 in 20 years. You informed the panel that you had not had any contact with either witness. You submitted that these special measures puts you at a disadvantage as it names you as intimidating when you are not and there is no evidence that you are.

The legal assessor reminded the panel of Rule 23(1) and referred it to *R. (Levett) v Health and Care Professions Council* [2013] EWCH 3330 (Admin). The panel heard and accepted the advice from the legal assessor.

The panel applied the guidance in the case of *Levett* and determined that Person 1's feelings of intimidation were genuinely held. The panel therefore decided to treat Person 1 as a vulnerable witness. In reaching this decision, the panel draws no adverse inference against you. The panel next considered the special measure it was inviting to adopt, namely you turning off your camera whilst Person 1 gave evidence. The panel was satisfied this may improve the quality of Person 1's evidence and that it would not be disproportionate to allow this special measure.

In regard to Colleague 2, the panel again applied the guidance in the case of *Levett* and determined that Colleague 2's complaint of intimidation was genuine given that she was the alleged victim of an allegation of violence. In these circumstances, the panel determined to treat Colleague 2 as a vulnerable witness. In reaching this decision, the

panel draws no adverse inference against you. The panel next considered the special measure it was inviting to adopt, namely you turning off your camera whilst Colleague 2 gave evidence. The panel was satisfied this may improve the quality of Colleague 2's evidence and that it would not be disproportionate to allow this special measure.

Application for additional special measures for Colleague 2

Mr Hoskins submitted that Colleague 2 has requested an additional special measure. He submitted that as the panel have already found Colleague 2 to be vulnerable, the nature of the additional special measures is that whilst she gives evidence, she is supported by a colleague, Person 2. Mr Hoskins informed the panel that Person 2 will be seen on camera, and she will not be able to communicate orally or in any other way with Colleague 2.

You opposed this application. You informed the panel that you know Person 2 professionally, and outside of work. You informed the panel that the presence of Person 2 who holds a position of seniority within the Trust would make you feel uncomfortable. You also were quite clear that much of the way you intended to cross-examine the witness would entail talking about your private information and you did not wish this person to have intimate knowledge of your private life.

The panel heard and accepted advice from the legal assessor.

The panel refused the application for additional special measures. It determined that because you are unrepresented and you will be cross-examining the witness yourself, it would be unfair to allow Person 2 to be present to support Colleague 2 given that her presence would make you feel uncomfortable. Furthermore, the panel considered that because Person 2 is known to you both professionally and personally, it would be inappropriate for Person 2 to be present during the hearing when evidence relating to your private life, and the private life of Patient B, is discussed.

Application for special measures for Manager 1

Mr Hoskins submitted that although the panel had directed at his invitation, that any applications for special measures should have been provided in writing by 23 February 2024, the NMC had received new evidence from Manager 1 indicating that she felt intimidated and would therefore benefit from special measures whilst giving evidence. Mr Hoskins therefore invited the panel to consider the application notwithstanding directions 2 and 4(b).

You submitted that you did not object to Mr Hoskins making the application but that you objected to the substance of it.

The panel decided to allow Mr Hoskins to make the application for special measures for Manager 1. In reaching this decision, the panel was mindful that the directions it had made were to ensure the efficient management of the remaining hearing time. The panel was satisfied that by hearing the application, it would not adversely affect the timetable of the hearing.

Mr Hoskins invited the panel to treat Manager 1 as a vulnerable witness. Mr Hoskins asked for Manager 1 to have side-by-side support during her evidence. He referred the panel to Rule 23. Mr Hoskins informed the panel that Manager 1 is anxious and nervous, and especially nervous about being cross-examined by you. He referred the panel to two solicitor's letters sent by you to Manager 1, and submitted that these were threatening and accusatory.

Mr Hoskins submitted that Manager 1 is vulnerable and there is no real prejudice to you if the special measure is granted.

You objected to the application for special measures for Manager 1.

You submitted that the panel should not treat Manager 1 as a vulnerable witness. You informed the panel it would be unfair as you have not had any contact with Manager 1 since 2020. You submitted to the panel that the solicitors letters were not of a threatening nature. You informed the panel that copies of both letters were available for the panel to read in Exhibit 3. You submitted that your solicitor had sent the letters to Manager 1 because Manager 1 had disclosed [PRIVATE].

You informed the panel that you are concerned that the witnesses are communicating with each other, and you feel that they are trying to make things difficult for you as you are representing yourself.

You submitted that you also objected to the person identified as being able to provide side-by-side support to Manager 1 because they were an employee of the Trust. You submitted that it would be inappropriate for this person to be present because you intended to cross-examine the witness about matters relating to your private life and the private life of Patient B. You submitted that you did not want this discussed in the Trust.

You submitted that if the panel was minded to grant the application, you would not object if the person providing side-by-side support was not an employee of the Trust.

The panel heard and accepted advice from the legal assessor.

The panel applied the guidance in the case of *Levett* and determined that Manager 1's feelings of intimidation were genuine. In these circumstances, the panel determined to treat Manager 1 as a vulnerable witness. In reaching this decision, the panel draws no adverse inference against you. The panel next considered the special measure it was inviting to adopt, namely side-by-side support. The panel was satisfied this may improve the quality of Manager 1's evidence and that it would not be disproportionate to allow this special measure. However, the panel determined that the person providing the support should not be an employee of the Trust.

Application on hearsay evidence

Mr Hoskins made an application to admit the witness statement of Colleague 3 dated 24 January 2022 as hearsay evidence.

He referred the panel to the written hearsay application made on behalf of the NMC. It stated the following:

'In respect of the [Colleague 3] evidence, it is relevant as her account (both in her NMC statement and in the local level investigation) supports the evidence provided by [Colleague 2] by [Colleague 3] witnessing the events in the hallway to such an extent that she said words to the effect of "you can't do that to her" which tends to suggest that the account of [Colleague 2] is correct and the Registrant's account is wrong. This therefore goes to the heart of Charge 6. She also provides ancillary evidence of the state of mind and level of animated emotion Ms Mullan was displaying which tends to support her having acted in the way the NMC allege. This indirectly supports the evidence relied upon by the NMC in respect of Charge 4.

In respect of fairness, and taking each of the Thorneycroft (supra) criteria in turn:

- a. This evidence is clearly not the sole and decisive evidence in this case, which also emanates from the NMC calling [Colleague 2], which it intends to do. Furthermore, this factor is not party-specific, so the Committee is also invite to bear in mind that evidence has been adduced by the Registrant in respect of this charge from her own account (see the references in the Evidence matrix to the Registrant's case) and, moreover, in adducing (without objection but not by agreement) the local level statement of [Person 3] [RR/244-245], as such in terms of the overarching issue of fairness, there is an equality point whereby if the Registrant is able to rely on that statement, which is in fact less safeguarded by being made specifically for NMC proceedings and older, then the NMC should be permitted to rely on the [Colleague 3] evidence.*

- b. *The nature and extent of the challenge to this charge is outlined within the Opening Note (see paragraphs 25-31) effectively the charge is denied and the Registrant's case is that she did make contact with [Colleague 2] but her motivation was different and that it was a difference of degree rather than kind. As such, although the evidence provided by [Colleague 3] is evidently the subject of challenge and no doubt the suggestion that she was wrong to an extent and/or biased in her viewpoint, the challenge is unlikely to be so extreme as to suggest that she witnessed nothing she alleges.*
- c. *At present based on the Registrant's case known to the NMC (see, again, the Evidence matrix and the references to the Registrant's response bundle), it is not understood that there is any allegation of [Colleague 3] fabricating or having any reason to fabricate the evidence she has provide. The Registrant will be in a position to address the Committee on this more fully.*
- d. *The charge of mistreating, amounting to a battery, of a colleague is undoubtedly a serious one. However, amongst other charges (focusing predominantly on an alleged repeated pattern of dishonesty) and itself being a single incident in the context of tempers running high, with no evidence of any previous such conduct, the Committee may feel this is neither the most serious allegation faced by this Registrant nor, in isolation, the most serious in the canon of allegations this Committee could see. There should be no doubt, however, that if this charge is found proved, the NMC will be submitting that it is serious enough alone to constitute misconduct, that is the alleged behaviour would be regarded as deplorable.*
- e. *There is a good reason for the non-attendance of the [Colleague 3]. The NMC has not been able to contact her and are under the impression that she has moved to Canada. This is supported by the attached bundle of documents (which will be sought to be adduced in accordance with the Directions in due*

course), which demonstrates [Colleague 3] has retired and since June 2023, there have been repeated efforts to call [Colleague 3] on the telephone, messages being left, information being sought by colleagues and ultimately the Trust to provide alternative means of contacting this witness all to no avail. If it is correct (and there is no reason to doubt) that [Colleague 3] is out of the jurisdiction, this significantly if not practically insurmountably curtails the NMC's ability to call her as a witness.

- f. The NMC have made timely, reasonable and proportionate efforts to secure the attendance of this witness. There is little more that could have been done.*

- g. The Registrant has been made aware that this evidence would be relied upon at trial as long ago as June 2023 when she filled in the Case Management Form indicating she disagreed with the content of the evidence and the mode by which it was proposed to hear her evidence (namely via video link). She was notified by email on 30 August 2023 by the NMC that [Colleague 3] would be being called to give evidence and a hearsay application would be being made. She responded to this email to confirm receipt but provided no response to the substance of the suggestion of the hearsay application. She was also given additional prior notice that the NMC sought to rely on the witness as hearsay evidence. At the latest, in an email of 5 February 2024 (some 3 weeks prior to this hearing commencing) provided the registrant with this information and again by way of the hearing timetable produced on 13 February 2024. As such, the Registrant (whether represented or not) has had prior notification of this evidence.*

For the above reasons, it is submitted that this evidence is admissible and should be admitted in this case.'

You objected to the admissibility of Colleague 3's witness statement as hearsay evidence.

You submitted that it would be unfair to admit the evidence because:

1. Colleague 3 was a temporary member of staff, she was employed by an agency and was not employed by the Trust.
2. You submitted that Colleague 3 produced one of the photographs in relation to one of the charges, and that there has been discrepancies shown with two images. You informed the panel that without Colleague 3's presence, you will not be able to cross examine her.
3. You submitted to the panel that the previous witnesses have inconsistencies in their statements, so Colleague 3's evidence would weigh more. This would give you a chance to challenge her statement.
4. You informed the panel that the NMC have requested Colleague 3 opportunity to respond multiple times by email, and she has not given a valid reason as to why she cannot respond. You said that the hearing is virtual so there is no real reason as to why Colleague 3 cannot attend the hearing.
5. You submitted that the Trust did not follow a process for the alleged incident.
6. This is a serious allegation against you both as a professional and as a mother, therefore it would be unfair for you to not have an opportunity to cross examine Colleague 3.

Mr Hoskins responded to your submissions. In relation to the first point, he submitted that Colleague 3 was not employed by the Trust and is separate from the '*conspiracy*' and '*gossip*' within the Trust and is therefore, more likely to be independent and goes against any idea of fabrication.

Mr Hoskins submitted that in relation to the photograph, there is no discrepancy and the evidence is consistent. He informed the panel that the bundle shows two dates of the photograph, 8 January 2020 when the photograph was taken and 10 January 2020 when it was sent by email. Mr Hoskins submitted that the photograph was taken on Colleague 2's phone and you have already cross-examined her, therefore there is no prejudice. He

submitted that Colleague 3's evidence is not the sole and decisive decision in respect of the photograph.

Mr Hoskins informed the panel that the NMC have not been able to contact Colleague 3 in regards to her attendance at the hearing. He submitted that Colleague 3 is out of the jurisdiction as far as the NMC is aware.

Mr Hoskins submitted that in terms of the Trust following a process, you resigned therefore the process was curtailed. He submitted that at the end of Colleague 3's witness statement, there is a signature and date and a statement to say the statement is true.

Mr Hoskins submitted although the allegation to which Colleague 3 is able to give evidence about is serious, you face other more serious allegations involving dishonesty.

Mr Hoskins submitted that it would be fair and just to admit the evidence of Colleague 3.

In response, you submitted that although Colleague 3 was agency staff, she had still worked closely within the team for two years. You also said it was your understanding from the emails disclosed that Colleague 3 had been contacted. You said that although Colleague 3 had retired to [PRIVATE].

The panel heard and accepted the advice of the legal assessor. He referred the panel to Rule 31 and to the cases of *Thornycroft v NMC* (2014) EWHC 1565 (Admin), *El Karout v the NMC* (2019) EWHC 28 (Admin) and *Mansaray v the NMC* (2023) EWHC 730 (Admin).

The panel noted that Rule 31 provides:

'31.(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such

evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).'

The test of admissibility is therefore twofold, firstly the panel must be satisfied that the evidence is relevant to a matter in issue and secondly, it must be fair in all the circumstances of the case to admit it.

The panel noted that both Mr Hoskins and yourself agree that the evidence given by Colleague 3 is relevant to charge 6. The panel noted that Colleague 3 was present at the time of the alleged incident and can therefore give direct evidence about what she observed. Furthermore, Colleague 3 took the photograph of Colleague 2's arm using Colleague 2's phone. The panel was therefore satisfied that Colleague 3's evidence was relevant.

The panel next considered whether it would be fair to admit Colleague 3's witness statement as hearsay evidence. The panel noted that the statement dated 24 January 2022 was 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 her.

The panel acknowledged that it should not admit the proposed hearsay evidence as a matter of routine, and that it must perform a careful balancing exercise and determine whether it would be fair for it to be admitted. The panel noted that at paragraph 56 in the judgement in the case of Thornycroft, the judge stated:

'56. ... The decision to admit the witness statements despite their absence required the Panel to perform careful balancing exercise. In my judgment, it was essential in the context of the present case for the Panel to take the following matters into account:

- (i) whether the statements were the sole or decisive evidence in support of the charges;*
- (ii) the nature and extent of the challenge to the contents of the statements;*
- (iii) whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
- (iv) the seriousness of the charge, taking into account the impact which adverse findings might have on the Appellant's career;*
- (v) whether there was a good reason for the non-attendance of the witnesses;*
- (vi) whether the Respondent had taken reasonable steps to secure their attendance; and*
- (vi) the fact that the Appellant did not have prior notice that the witness statements were to be read.'*

The panel therefore applied each of these factors to the circumstances of your case as follows:

- i. The panel determined that Colleague 3's evidence was not the sole and decisive evidence in relation to charge 6, they have read the statement and have heard oral evidence from Colleague 2.
- ii. The panel recognised that your challenge to the evidence provided by Colleague 3 was fundamental and extensive.
- iii. The panel noted that you have suggested that all of the witnesses worked closely together but it was not satisfied from the available evidence that Colleague 3 had reasons to fabricate her evidence.
- iv. The panel considered the charge to be very serious and if found proven, may adversely impact your career.
- v. The panel was satisfied that there was a good reason for the non-attendance of Colleague 3. The panel noted that Colleague 3 has retired and is no longer contactable and believed [PRIVATE].
- vi. The panel was satisfied that the NMC have taken reasonable steps to secure the attendance of Colleague 3 at this hearing. The panel noted that the NMC had made

numerous attempts through different methods to contact Colleague 3 but without success.

- vii. The panel was satisfied that you had been given appropriate prior notice that an application would be made to admit Colleague 3's witness statement as hearsay evidence.

Having regard to all the above matters, the panel determined that on balance it would be fair to admit Colleague 3's statement as hearsay evidence. The panel was satisfied that it would be fair and in the public interest for the circumstances of charge 6 to be fully explored and this supported the admission of this hearsay evidence into the proceedings.

In reaching this decision, the panel recognised that you would be disadvantaged by not being able to cross-examine and challenge the evidence of Colleague 3 but was satisfied that this could be reflected when the panel has evaluated all the evidence before it and determines what weight, if any, to give to Colleague 3's hearsay evidence.

Decision and reasons on application of no case to answer

The panel considered an application from you that there is no case to answer in respect of charges 1, 3, 4a, 4b, 5a, 5b, 5c, 6, 9, 10 and 11. This application was made under Rule 24(7).

You submitted that with respect to charge 1, Patient C was under your care and that you had produced evidence to support your assertion in your response bundle. You stated that you denied the allegation in charge 3. In relation to charges 4a and 4b, you stated that you denied them and that there were inconsistencies in Colleague A's statements. Further, you maintained that no appropriate protocol was followed at that time and there was no opportunity for a formal meeting at the time of the alleged incident.

You stated that with respect to charge 5, you had evidence to show that Patient B was under your care as she was a vulnerable adult and you had instructions from the General

Practitioner (GP) to provide care for her. With respect to charges 5 and 6, there were inconsistencies in the witness statements and there was insufficient evidence produced by the NMC with respect to those charges. You asserted that there was a lack of protocol at the Trust's investigations, the witnesses' credibility was poor and the images produced by the NMC had incorrect dates and times. There were no medical reports and the allegation was not reported through the appropriate channels.

You submitted that with respect to charges 9, 10 and 11, there is insufficient evidence to show that you were dishonest as there were no formal records of the investigations at that time. You had also disclosed during your employment interviews that you were under investigation.

Mr Hoskins highlighted that you had stated during your submissions with respect to charge 1 that Patient C was under your care and that you had permission to access their records.

Mr Hoskins highlighted that with respect to charge 3, you had only stated 'no' to the charge when making your submissions on the no case to answer application. He submitted that it was obvious that you denied the charge, however, a simple denial of the charge falls short of the required standard to show that there was no case to answer. Mr Hoskins stated that he recognised that the panel could decide to make a no case to answer on its own volition. Mr Hoskins submitted that the NMC evidence with respect to charge 3 when taken at its highest could lead to the charge found proved and a finding of misconduct. He submitted that your alleged conduct amounted to a breach of Patient A's privacy and confidentiality as well as a breach of the Code: Professional standards of practice and behaviour for nurses and midwives 2018 (the Code). He submitted that your alleged conduct was aggravated by the acrimonious personal circumstances between you and Patient A.

In relation to charges 4a and 4b, Mr Hoskins submitted that your submissions with respect to these charges are irrelevant to the issue of whether there is a case to answer, and rather go to the issue of credibility, which is not decided at this stage. He submitted that

Colleague A was clear and consistent in both her oral and documentary evidence in this case and there is sufficient evidence in the NMC exhibit bundle to support charges 4a and 4b. He further submitted that your alleged conduct in charges 4a, 4b, 9 and 10 were clear breaches of the Code with respect to conduct and demeanour during investigations and when a nurse's practice is challenged. Therefore, they could lead to a finding of misconduct and impairment.

Mr Hoskins submitted that your submissions with respect to charge 6 are irrelevant to the issue of whether there is a case to answer and rather go to the issue of credibility, which is not decided at this stage. He stated that the NMC would respond to such issues at its closing submissions.

Mr Hoskins submitted that with respect to charge 11, the panel should note that the investigations into the allegations against you had reached an advanced stage both at the NMC and Trust, therefore, there is a prima facie case of dishonesty as you could not have been unaware that such investigations were ongoing at the time you made the declarations to the Agency. He submitted that this charge is supported by the oral and documentary evidence of Manager 1. Therefore, there is a case to answer with respect to charge 11.

Mr Hoskins submitted that with respect to charge 1, it is possible that the panel may have concerns as to whether there is a case to answer under Rule 24 (7) and Rule 24 (8). However, he noted that you had only made your application under Rule 24 (7) in relation to facts and not misconduct. Mr Hoskins submitted that the NMC evidence demonstrated that Patient C had an out of hours appointment with the GP only days before you had accessed the Electronic Care Record (ECR), that Patient C made a complaint to the Trust about such access and the Trust found such access, albeit earlier than when the complaint occurred, was without any clinical justification. In terms of Rule 24 (8), Mr Hoskins submitted that notwithstanding that Patient C is your close relative, your alleged conduct was a clear breach of the Code with respect to patient privacy and confidentiality.

With respect to charges 5a, 5b and 5c, Mr Hoskins submitted that based on the sufficiency of both oral and documentary evidence provided by the NMC, there is no well-founded basis for no case to answer.

In conclusion, Mr Hoskins invited the panel to not grant your application for no case to answer with respect to the disputed charges.

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

In reaching its decision, the panel has made an initial assessment of all the evidence that had been presented to it at this stage. The panel was solely considering whether sufficient evidence had been presented, such that it could find the facts proved in relation to charges 1, 3, 4a, 4b, 5a, 5b, 5c, 6, 9, 10 and 11 and whether you had a case to answer in this regard.

The panel had regard to the test set out in the case of *R v Galbraith*. In *Galbraith*, Lord Lane set out the following test:

'(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.

(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.

(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witnesses' reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury...There will of course as always in this branch of the law be borderline cases. They can safely be left to the discretion of the judge.'

The panel noted that your submissions were in relation to whether sufficient evidence has been presented in this case to find the facts proved, under Rule 24(7). However, no submissions were made as to whether sufficient evidence has been presented to support a finding of impairment, under 24(8).

Having regard to the submissions you made, although you did not specifically refer to the case of Galbraith, your submissions were in relation to the second limb of the Galbraith test. In this regard, the panel considered the application of no case to answer under Rule 24(7).

Charge 1

1. Accessed the medical records of Patient C when they were not a patient under your care on 28 June 2017.

The panel considered the oral evidence and respective witness statements of Mr 1 and Manager 1 as well as their associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Charge 3

3. Disclosed to Person 1 on 21 March 2019 that Patient A had a sexually transmitted disease.

The panel considered the oral evidence and respective witness statements of Colleague A and Person 1 as well as their associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Charges 4a and 4b

4. In relation to accessing the documents of Patient A on 19 June 2019:
 - a. Implied that Colleague A had only asked you about whether you had accessed the paper records of Patient A at the meeting on 27 March 2019 when she had asked about both the paper and electronic records.
 - b. Stated to Colleague A that you had accessed the records at or after 3pm when the records were accessed before that time.

The panel considered the oral evidence and witness statement of Colleague A as well as its associated exhibits.

The panel was therefore satisfied that the evidence with respect to these charges, when taken at its highest, could lead to the charges being proved. It therefore concluded that there is a case to answer in relation to these charges.

Charges 5a, 5b and 5c

2. Accessed the medical records of your mother, Patient B, when she was not a patient under your care on:
 - a. 9 October 2019.
 - b. 11 October 2019.
 - c. 5 November 2019.

The panel considered the oral evidence and witness statement of Manager 1 as well as its associated exhibits.

The panel was therefore satisfied that the evidence with respect to these charges, when taken at its highest, could lead to the charges being proved. It therefore concluded that there is a case to answer in relation to these charges.

Charge 6

6. On 8 January 2020 gripped Colleague 2's arm and/or tried to pull her into a room.

The panel considered the oral evidence and respective witness statements of Colleague 2 and Colleague 3 as well as their associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Charge 9

9. Your actions at charge 4a were dishonest in that you deliberately sought to suggest that you had not been asked about the electronic records when you had been.

The panel bore in mind that the standard test for determining dishonesty was laid down in the case of *Ivey v Genting Casinos UK Limited* [2017] UKSC 67 which provides:

- what was the defendant's actual state of knowledge or belief as to the facts; and
- was his conduct dishonest by the standards of ordinary decent people?

In considering whether there was sufficient evidence to enable the panel to draw inference as to your actual state of knowledge/belief as to the facts in relation to charge 4a, the panel carefully considered all the evidence before it. The panel bore in mind that it had earlier determined that there is a case to answer in relation to charge 4a. It then considered the oral evidence and witness statement of Colleague A as well as its associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Charge 10

10. Your actions at charge 4b were dishonest in that you deliberately sought to represent that you had a legitimate reason for accessing Patient A's records.

The panel bore in mind that the standard test for determining dishonesty was laid down in the case of *Ivey v Genting Casinos UK Limited* as cited in the preceding charge.

In considering whether there was sufficient evidence to enable the panel to draw inference as to your actual state of knowledge/belief as to the facts in relation to charge 4b, the panel carefully considered all the evidence before it. The panel bore in mind that it had earlier determined that there is a case to answer in relation to charge 4b. It then considered the oral evidence and witness statement of Colleague A as well as its associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Charge 11

11. Your actions at charges 7 and/or 8 were dishonest in that you deliberately sought to represent that you were not under investigation when you knew that you were under investigation by the NMC and/or the Western Health and Social Care Trust.

The panel bore in mind that the standard test for determining dishonesty was laid down in the case of *Ivey v Genting Casinos UK Limited*.

In considering whether there was sufficient evidence to enable the panel to draw inference as to your actual state of knowledge/belief as to the facts in relation to charges 7 and 8, the panel carefully considered all the evidence before it. The panel bore in mind that you had made admissions to charges 7 and 8, which were then found proved by way of your admissions. The panel also considered the oral evidence and respective witness statements of Colleague A, Manager 1 and Ms 1 as well as their associated exhibits.

The panel was therefore satisfied that the evidence with respect to this charge, when taken at its highest, could lead to the charge being proved. It therefore concluded that there is a case to answer in relation to this charge.

Conclusion

The panel determined that there had been sufficient evidence to support charges 1, 3, 4a, 4b, 5a, 5b, 5c, 6, 9, 10 and 11 at this stage and, as such, it was not prepared, based on the evidence before it, to accede to an application of no case to answer. What weight the panel gives to any evidence remains to be determined at the conclusion of all the evidence.

Decision and reasons on facts

At the outset of the hearing, you made full admissions to charges 2a, 2b, 7, 8a and 8b.

The panel therefore finds charges 2a, 2b, 7, 8a and 8b, proved in their entirety, by way of your admissions.

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 Hoskins and by you.

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:

- Colleague A: Lead Nurse for the Tissue Viability Service at the Trust from 2017 to 2019.
- Person 1: [PRIVATE].
- Colleague 2: Tissue Viability Nurse at the Trust at the time of the incidents.
- Ms 1: Responsible Person at the Agency at the time of the incidents.
- Manager 1: Lead Tissue Viability Nurse and your Line Manager from December 2019 at the time of the incidents.
- Mr 1: Assistant Director for Professional Nursing Governance, Safe & Effective Care at the Trust at the time of the incidents.

The panel also heard evidence from you under affirmation.

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

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

Charge 1

1. Accessed the medical records of Patient C when they were not a patient under your care on 28 June 2017.

This charge is found NOT proved.

The panel took into account the witness statement of Manager 1 dated 13 October 2022 in which she stated:

'I was asked by the Trust following a complaint from member of the public who believed to be relative of Karla's if the allegation regarding the inappropriate access of their records was correct. They suggested Karla had accessed the ECR system and viewed the patient notes. I investigated these concerns, an audit was ran and I found no evidence suggesting Karla has accessed their records.'

The panel considered the witness statement of Mr 1 dated 2 January 2024, in which he stated:

'I confirm on behalf of the Trust that patient ('Patient C') was not a patient of the Registrant on 28 June 2017.

I reviewed Patient C's Electronic Care Record with the Trust Lead. Patient C did have an attendance at the GP Out of Hours Service on the 24th of June 2017 and the matter was reported on the 26th of June 2017.

In 2007 some 10 years earlier Patient C did attend a Dermatology appointment but there was no on-going dermatology episode of care open for this patient on 28th of June 2017.

Based on the recorded episodes of care and investigations requested and reported on prior to the 28th of June 2017, there is no clinical reason why the Registrant would have reason to access this patient record.'

The panel took into consideration that you denied the allegation as you stated that although you accessed Patient C's medical records, she was under your care at the time of that access. You stated that you could not recall the specific period of time that Patient C was under your care.

The panel noted that when Patient C made the complaint to the Trust that you had accessed her medical records within a specified period of time, an audit was conducted by the Trust. However, there was no evidence that you had accessed Patient C's medical records within the time frame alleged by Patient C, as confirmed by Manager 1. A further audit was conducted by the Trust and it was discovered that you had accessed the medical records of Patient C. In this regard, the panel had sight of the *Audit Email for Patient C*.

The panel however noted that it was not provided with the actual audit report of the medical records of Patient C. It further noted that the Audit Email was neither dated nor signed by any author. There was no evidence to show the process followed to produce the audit report or the audit trail. Furthermore, the panel was not provided with the evidence of the complaint made by Patient C or the alleged time period in which her medical records were said to have been accessed.

Accordingly, the panel was not satisfied that the NMC had discharged the burden of proof. It therefore found charge 1 not proved.

Charge 3

3. Disclosed to Person 1 on 21 March 2019 that Patient A [PRIVATE]

This charge is found proved.

The panel took into account the witness statement of Person 1 dated 5 February 2020 in which she stated:

'Karla's behaviour was having a negative impact on Patient A, so I decided to call her via Facebook Messenger, in the hope that I can get through to her and put an end to the conflict between her and Patient A, I have known Karla all her life and thought that if I calmly spoke to her and asked that she stop, I might be able to get through to her.'

'Karla started to make more and more personal remarks about Patient A and said to me, among other things, "your sister is psychopath" and "your sister is a dirty slag" ...'

'When I challenged Karla on what she was saying, she repeated herself, stating "your sister is a slag, [PRIVATE].'

The panel considered the witness statement of Colleague A dated 3 February 2020 in which she stated:

'In order to verify whether the information that Karla had allegedly disclosed to Patient A's sister was available on Patient A's ECR, I accessed the patient's list of encounters with healthcare professionals ...'

'The patient's contact details and the information about her [PRIVATE] were not stored in the same place on the ECR; in my opinion it is not plausible that Karla had inadvertently accessed the patient's clinical information while looking for her contact information.'

The panel took into consideration that you denied the allegation and stated that although you had told Person 1 that Patient A has [PRIVATE].

The panel bore in mind that you made admissions to the fact that you had accessed Patient A's medical records without clinical justification on 26 September 2018 and on 7 November 2018. The panel took into account that Person 1 stated in her witness statement that Patient A was shocked about what you had told Person 1 as she stated that she had only revealed such information to her GP. The panel noted that in your evidence, you stated that when you accessed Patient A's ECR, you did not access any records relating to Patient A's [PRIVATE] health and that you believed such records required special permission to be accessed. However, the panel preferred and accepted the oral evidence of Colleague A that Patient A's [PRIVATE] health records were accessible via Patient A's ECR and did not require any special permission. The panel was satisfied that when you accessed Patient A's ECR, you had the opportunity to access Patient A's [PRIVATE] health records and that it is more likely than not that you did so. The panel found that on the balance of probabilities that it was highly unlikely that it could have been a coincidence for you to have made this disclosure when it was recorded in Patient A's health records that she had attended [PRIVATE].

The panel took into account [PRIVATE]. It noted that Person 1 was clear and consistent in both her oral and documentary evidence that you had disclosed to her on 21 March 2019 that Patient A had [PRIVATE]. The panel further noted that this was said in the heat of the moment when you were making various allegations about [PRIVATE] conduct to Person 1. It also noted that the conversation took place at a time when there were acrimonious exchanges occurring between you and [PRIVATE].

The panel therefore accepted Person 1's account of the incident. Based on the evidence before it, the panel was satisfied that it was more likely than not, that on 21 March 2019, you had disclosed to Person 1 that Patient A had [PRIVATE]. Accordingly, the panel found charge 3 proved.

Charges 4a and 4b

4. In relation to accessing the documents of Patient A on 19 June 2019:
 - a. Implied that Colleague A had only asked you about whether you had accessed the paper records of Patient A at the meeting on 27 March 2019 when she had asked about both the paper and electronic records.
 - b. Stated to Colleague A that you had accessed the records at or after 3pm when the records were accessed before that time.

These charges are found proved.

The panel took account of the witness statement of Colleague A dated 3 February 2020 in which she stated:

'During an investigatory meeting with Karla on 19 June 2019, she was questioned about her initial denial – on 27 March 2019 – that she had accessed the patient's records. Karla stated that she mistakenly believed that I was solely referring to the patient's paper records; the notes I recorded at the time (JM/1) confirm that I had asked "either Paper or ECR".'

'Karla was also questioned about the justification she offered – that she needed to contact her daughter. Karla suggested that, on both occasions, she had been prompted to obtain the patient's phone number from her ECR by a phone call from her distressed daughter.'

'Karla confirmed that both phone calls from her daughter would have taken place at, or after, 3pm – the time her daughter finishes school. I realised that Karla's explanation was inconsistent with the time at which she accessed the patient's ECR on both 26 September and 7 November 2018 – 14:52 and 12:43 respectively. I

asked Karla on several occasions “are you absolutely sure that it was after 3pm?” and Karla stated that it was.’

The panel took into consideration that you denied the allegation and maintained your position at the investigatory meeting on 19 June 2019 that Colleague A had only asked you on 27 March 2019 whether you had accessed Patient A’s paper records and not electronic records. You further asserted that you had only accessed Patient A’s records at or after 3pm in order to obtain her contact information.

The panel took into account that Colleague A was clear and consistent in both her oral and documentary evidence that she had asked you on 27 March 2019 whether you had accessed both paper and electronic records of Patient A. The panel noted that Colleague A had made contemporaneous notes of her meeting with you on 27 March 2019. In this regard, the panel had sight of the *Contemporaneous notes of actions taken by... (Colleague A)... following the receipt of Patient A’s complaint*, which confirmed her evidence.

The panel also had regard to the *Trust Investigation Report, dated 19 August 2019* and *Disciplinary outcome letter, dated 19 November 2019*. The panel noted that there were various inconsistencies in your account of the incident as in one instance, you had maintained that you had accessed Patient A’s medical records at or after 3pm when you had received a phone call from your child at school. However, when you were challenged about that account during your disciplinary hearing at the Trust, you changed your account and stated that the calls had occurred before 3pm. You further changed your position and stated that the calls had occurred a day before you accessed the medical records of Patient A.

In light of the various inconsistencies in your accounts of the incident, the panel rejected your evidence but accepted the account of Colleague A. In this regard, the panel found charges 4a and 4b proved on the balance of probabilities.

Charges 5a, 5b and 5c

5. Accessed the medical records of your mother, Patient B, when she was not a patient under your care on:
 - a. 9 October 2019.
 - b. 11 October 2019.
 - c. 5 November 2019.

These charges are found proved.

The panel took account of the witness statement of Manager 1 dated 13 October 2022 in which she stated:

'Unfortunately, further concerns were made by staff in TVN following Karla's departure. I was told Karla had further accessed the patient records of (...Patient B...). This would have been a breach of her final written warning. I therefore asked for an audit to be completed. The information evidenced Karla had accessed (...Patient B...)'s patient records 87 times over 3 separate days..... The access of these records was during the time Karla should have been working in her role as a TVN.'

The panel took into consideration that you denied the allegation and stated that although you accessed the medical records of Patient B at the various timeframes specified in the charge, she was a patient under your care at those times. You further stated that you had the consent of both Patient B and her GP to access her medical records.

The panel had regard to the *Audit Records of Patient B* and noted that the audit records showed that you had accessed the medical records of Patient B on 9 October 2019, 11 October 2019 and 5 November 2019. The panel noted that Manager 1 was clear and consistent in both her oral and documentary evidence that Patient B was not under your care at those times you had accessed her medical records. It further noted that based on

your responses to the panel, it appeared that you had assumed that, as a registered nurse, you could take on the medical care of Patient B due to your relationship with her as your family member. However, the panel took into account that there was no evidence to show that the medical care of Patient B was transferred to you or that you had obtained consent from her GP to access her medical records. The panel was of the view that it is not usual medical practice for health professionals to transfer the medical care of a patient to a family member, even if that family member is also a health professional. In any exceptional circumstance that such transfer is required, it would be documented by the relevant health professional.

Based on the evidence before it, the panel was satisfied that it was more likely than not, that you had accessed the medical records of Patient B on 9 October 2019, 11 October 2019 and 5 November 2019, when she was not a patient under your care. Accordingly, the panel found charges 5a, 5b and 5c proved.

Charge 6

6. On 8 January 2020 gripped Colleague 2's arm and/or tried to pull her into a room.

This charge is found proved.

The panel took into account the witness statement of Colleague 2 dated 10 January 2022 in which she stated:

'Karla met me in the corridor and firmly gripped my right forearm, advising she wanted to talk and pulled me in the direction of the copy room. I asked her to let go of my arm as I was in no frame of mind to talk and things were too hostile, but she would not let go of my arm. Karla started pulling me up the corridor. She wanted us to speak in the copy room but I didn't want to go with her. I was trying to pull away from her but she continued to hold my arm. (...Colleague 3...) called out from the

doorway “you can’t do that to her”. Karla let go of my arm and she walked away. Karla gripped my arm for no longer than 10 seconds before letting go.’

‘I returned to the office and sat down. I was feeling shocked and upset. I was crying. I immediately felt tenderness to my right arm and on inspection I noted a red mark from where Karla had gripped my arm. I showed (...Colleague 3...) and who said they could see the red mark. I asked [colleague 3] to take a photograph of my right arm lower wrist. The time stamp on the photo is 12.17pm. The photo shows a red mark where Karla grabbed me.’

The panel took into consideration that you denied the allegation and in your amended statement, you stated that you only made a hand gesture to prompt Colleague 2 to take the discussion into a separate room in private. You further stated that the panel should consider that the alleged incident was not filed as a datix or reported in accordance with the Trust’s guidelines and policies, nor was it reported to the PSNI. You further stated that the photograph of Colleague 2’s arm did not identify her as the subject of the photograph, was dated two days after the alleged incident occurred and there was no red mark noted as alleged.

The panel had regard to the *Photo of (Colleague 2’s) arm* and the local statement of Colleague 2 to the Trust. The panel was satisfied that the photograph was of Colleague 2’s arm, that it indeed showed a red mark on Colleague 2’s wrist and was taken shortly after the incident. The panel noted that Colleague 2 was clear and consistent in both her oral and documentary evidence that on 8 January 2020, you had gripped and pulled her into a room. The panel further noted that account was supported by the witness statement of Colleague 3 who was an eyewitness of the incident. Although, her statement amounted to hearsay, the panel attached some weight to it due to the fact that she was one of the eyewitnesses to the incident and she took the photograph of the injury. The panel also noted that Colleague 3 made a contemporaneous statement that was signed and dated, and the panel could not see any motive that Colleague 3 might have to subvert evidence.

However, the panel noted that there were various inconsistencies in your account of the incident as in one instance, you stated in your amended statement that you had only made hand gestures to prompt Colleague 2 to have a discussion, in another instance, you told the panel during your oral evidence that you had only brushed Colleague 2's arm at the time of the incident. The panel further noted that in Person 3's local statement, you had told her that you only touched Colleague 2's arm in a comforting and reassuring manner.

In light of the various inconsistencies in your accounts of the incident, the panel rejected your evidence but accepted the accounts of Colleague 2 and Colleague 3. In this regard, the panel found charge 6 proved on the balance of probabilities.

Charge 9

9. Your actions at charge 4a were dishonest in that you deliberately sought to suggest that you had not been asked about the electronic records when you had been.

This charge is found proved.

Having found charge 4a proved, the panel went on to consider whether your conduct in charge 4a was dishonest. In considering whether your action was dishonest, the panel had regard to the NMC Guidance on Making decisions on dishonesty charges, (DMA-8). It also had regard to the test laid down in the case of *Ivey v Genting Casinos UK Limited* which provides:

- what was the defendant's actual state of knowledge or belief as to the facts; and
- was his conduct dishonest by the standards of ordinary decent people?

In applying the first limb of the test to this case, the panel noted that you said that you did not deliberately lie at the meeting on 27 March 2019. Rather, you said that you were

shocked at being called in to the meeting [PRIVATE], you were worried that a complaint had been made and that you assumed that this was in relation to patient care. [PRIVATE] [PRIVATE]. The panel also took into account that you stated in your amended statement that it was normal practice as a Tissue Viability Nurse to document in paper notes and to use paper records and folders more than ECR and this was why you understood the question to relate to paper records.

[PRIVATE].

The panel bore in mind your good character and seriousness of the allegation. It was mindful that the more serious the allegation, the more cogent the evidence required for it to be proved on a balance of probabilities. The panel carefully considered your explanation but was of the view that based on the evidence before it, it was reasonable to infer that, at the Trust's investigatory meeting on 19 June 2019, you sought to cover-up for your denial during the meeting on 27 March 2019 that you had accessed Patient A's ECR. The panel was satisfied that, on 27 March 2019, Colleague A had asked you about the medical records of Patient A, who was under the care of her GP at that time and therefore it was not plausible that you had thought that she had only asked you about paper records, based on your assertion that paper records were the primary method of documentation used by Tissue Viability Nurses. The panel further noted that if you had sought to be open and transparent, you would have informed Colleague A that although you did not access Colleague A's paper records, you had accessed her electronic records. The panel was therefore satisfied that it was more likely than not that you deliberately sought to suggest that you have not been asked about accessing the electronic records when you had been.

In applying the second limb of the test to this case, the panel was satisfied that your conduct in charge 4a would be considered dishonest by ordinary decent people.

Accordingly, the panel determined that your conduct in charge 4a was dishonest and it therefore found charge 9 proved.

Charge 10

10. Your actions at charge 4b were dishonest in that you deliberately sought to represent that you had a legitimate reason for accessing Patient A's records.

This charge is found proved.

Having found charge 4b proved, the panel went on to consider whether your conduct in charge 4b was dishonest. In considering whether your action was dishonest, the panel had regard to the NMC Guidance on Making decisions on dishonesty charges, (DMA-8). It also had regard to the test laid down in the case of *Ivey v Genting Casinos UK Limited* which provides:

- what was the defendant's actual state of knowledge or belief as to the facts; and
- was his conduct dishonest by the standards of ordinary decent people?

In applying the first limb of the test to this case, the panel took into account that its findings in relation to charge 4b related solely to the time when you accessed Patient A's records and not to any motive or reason.

The panel noted that the wording of charge 10 alleged that your actions at charge 4b were dishonest '*in that you deliberately sought to represent that you had a legitimate reason for accessing Patient A's records*'. In the panel's view, this charge did not relate to the facts found proved as charged in 4b. Accordingly, the panel found charge 10 not proved.

Charge 11

11. Your actions at charges 7 and/or 8 were dishonest in that you deliberately sought to represent that you were not under investigation when you knew that you

were under investigation by the NMC and/or the Western Health and Social Care Trust.

This charge is found proved.

Having found charges 7 and 8 proved by way of admission, the panel went on to consider whether your conduct in charges 7 and 8 were dishonest. In considering whether your action was dishonest, the panel had regard to the NMC Guidance on Making decisions on dishonesty charges, (DMA-8). It also had regard to the test laid down in the case of *Ivey v Genting Casinos UK Limited* which provides:

- what was the defendant's actual state of knowledge or belief as to the facts; and
- was his conduct dishonest by the standards of ordinary decent people?

In applying the first limb of the test to charge 7, the panel was satisfied that the interview took place via telephone call, that you knew it was a formal interview for a role as a registered nurse and that you should have answered all questions truthfully. The panel was further satisfied that at the time of the interview, you knew that your answer 'no' when asked whether you were under investigation, was false.

In applying the first limb of the test to charge 8, the panel took into account that you stated that your conduct was a human error and that you had experienced some technical difficulties while completing the relevant application forms. You further stated that you had always made full disclosure to other employers about both the Trust and NMC investigations.

The panel rejected your explanation. It noted that at the time of the applications, you were fully aware of both NMC and the Trust investigations and that you had physically signed a hard copy of the application form. The panel noted that the form contained a declaration

which stated, 'I confirm I have not been the subject of any issues of concern or, investigations of any form regarding my performance.'

The panel was of the view that it was expected that as a health professional, you should carefully read any declaration before signing or responding to it. Furthermore, there is an expectation that as a registered health professional, you would act with honesty and integrity and answer all questions truthfully. The panel was satisfied that based on the evidence before it, it was reasonable to infer that you deliberately sought to represent that you were not under investigation at the time of the application.

In applying the second limb of the test to this case, the panel was satisfied that your conduct in charges 7 and 8 was deliberate as you realised that had you answered honestly the question in the interview and on the form, it is unlikely you would have been employed by the Agency. Accordingly, the panel was satisfied that your conduct would be considered dishonest by ordinary decent people.

Accordingly, the panel determined that your conduct in charges 7 and 8 were dishonest and it therefore found charge 11 proved.

Fitness to practise

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

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

The panel adopted a two-stage process in its consideration. First, the panel must 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.

Submissions on misconduct

Mr Hoskins provided the panel with written submissions with respect to misconduct, which stated:

1. *'Having found charges 2a) and b), 7 and 8a) and b) proved by admission and charges 3, 4, 5, 6, 9 and 11 proved on the evidence, pursuant to Rule 24(12), the next stage of this fitness to practise hearing addresses the concept of whether the Registrant's fitness to practise is currently impaired.*
2. *The NMC asserts that Ms Mullan's conduct amounts to serious misconduct because the conduct found proved discloses a deep-seated attitudinal problem and a marked propensity to dishonesty.*
3. *In due course it will be submitted that Ms Mullan remains currently impaired notwithstanding there being no issue indicating that she had any deficiency in her clinical practise, has had no previous disciplinary findings and has been practising since the time of the allegations. However, given the Committee's decision to deal first with misconduct alone, the following submissions will deal exclusively with the issue of **whether the facts found proved amount to misconduct.***

Legal Framework:

4. *Article 29 of the Nursing and Midwifery Order 2001 ("the Order") provides that this Committee can only take action if it finds that the allegation is well founded. "Allegation" is defined in Article 22 and provides that "where any allegation is*

made against a registrant to the effect that his fitness to practise is impaired by reason of misconduct". It is both these concepts of misconduct and impairment that are at issue here.

5. *Consideration of impairment must be undertaken in two separate stages. Firstly, the Committee must consider whether on the facts found proved, there is misconduct. Then, it must consider whether, as a result, the Registrant's fitness to practise is currently impaired. This approach was explained in the Judgement given by Mr Justice Cranston at paragraph 19 in *Cheatle v GMC* [2009] EWHC 645 (Admin):*

19. "A Panel must engage in a 2-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result, fitness to practise is impaired. But it may be that despite a [practitioner] having been guilty of misconduct, for example, a Panel may decide that his or her fitness to practise is not impaired."

As outlined above, the Committee have decided to take each step one at a time so the following submissions deal with misconduct alone:

6. *There is no strict definition of misconduct. However, Lord Clyde in *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311 at paragraph 35 stated:*

35.

"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.....in the particular circumstances."

7. *In Meadow v General Medical Council [2007] 1 All ER 1, the Court of Appeal made clear that “misconduct” should not be viewed as anything less than “serious professional misconduct”. At paragraph 200 Auld LJ said:*

“As to seriousness, Collins J. in Nandi v General Medical Council [2004] EWHC 2317 (Admin), rightly emphasised at [31] the need to give it proper weight, observing that in other contexts it has been referred to as “conduct which would be regarded as deplorable by fellow practitioners.”

8. *In Remedy UK Ltd v General Medical Council [2010] EWHC 1245 (Admin) the Court reviewed a number of authorities in relation to misconduct and derived a number of principles which included the following at paragraph 37:*

“Misconduct is of two principal kinds. It may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outside the course of professional practice it, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

Misconduct within the first limb need not arise in the context of a doctor exercising his clinical practice, but it must be in the exercise of the doctor’s medical calling. There is no single or simple test for defining when that condition is satisfied.

Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skill”.

9. *In Shaw v General Osteopathic Council [2015] EWHC 2721 (Admin), Kerr J determined that he should approach unacceptable professional conduct in the same way as Irwin J in the case of Spencer v General Osteopathic Council [2012] EWHC 3147. At paragraph 47 he said:*

“It seems to me that Irwin J was, with respect, correct to observe that a charge of unacceptable professional conduct does entail conduct that, to some degree, is morally blameworthy and would convey a degree of opprobrium to the ordinary intelligent citizen.”

Submissions:

10. *The charges found proved are clear breaches of the following parts of the NMC’s code of conduct.*

Charge	
2a)	<p>5 - <i>As a nurse or midwife, you owe a duty of confidentiality to all those who are receiving care. This includes making sure ... that information about them is shared appropriately.</i></p> <p><i>5.1 respect a person’s right to privacy in all aspects of their care.</i></p> <p><i>10.5 take all steps to make sure that all records are kept securely, and</i></p> <p><i>10.6 collect, treat and store all data ... appropriately.21.5 never use your professional status to promote causes that are not related to health</i></p>

2b)	5.1 (above); 10.5-6 (above); 21.5 (see above)
3	5.1 and 5.5 - share with people, their families and their carers, as far as the law allows, the information they want or need to know about their health, care and ongoing treatment sensitively and in a way they can understand. 20.5 treat people in a way that does not take advantage of their vulnerability or cause them upset or distress
4a)	20.2 act with honesty and integrity at all times, 23 Cooperate with all investigations and audits This includes investigations or audits either against you or relating to others, whether individuals or organisations. 24 Respond to any complaints made against you professionally. To achieve this, you must: (24.2) use all complaints as a form of feedback and an opportunity for reflection and learning to improve practice.
4b)	20.2, 24.2 (see above)
5a)-c)	5.1 (see above) 10.5-6 (see above) 21.5 never use your professional status to promote causes that are not related to health

6)	<p><i>1.1 treat people with kindness, respect and compassion</i></p> <p>8 <i>Work cooperatively. To achieve this, you must:</i></p> <p>8.1 <i>respect the skills, expertise and contributions of your colleagues, ...</i></p> <p>8.2 <i>maintain effective communication with colleagues</i></p> <p><i>20.2 act with honesty and integrity at all times, treating people fairly and without ... bullying or harassment</i></p> <p><i>20.4 keep to the laws of the country in which you are practicing</i></p> <p><i>20.6 (see above)</i></p>
7), 8a) an d b)	<p><i>20.2 act with honesty and integrity at all times...</i></p>
9) and 11)	<p><i>20.2 act with honesty and integrity at all times,</i></p>

11. *A breach of the Code, however, does not by and of itself constitute a finding of misconduct but the nature of the conduct must be regarded as both serious and deplorable in the minds of fellow practitioners. This is so because:*

- a. *Charge 2's seriousness will depend on this Committee's view of the circumstances of the access of those records and whether it is accepted that the events in admitted charge 2a) were in the context of desperation to obtain a telephone number in the context of a difficult childcare situation, or not. Even were there some justification in this, the report some hours later to PSNI together with the use of both lawyers previously and childcare professionals for communication indicates that alternative means were available to resolve this issue rather than compromising her professionalism in seeking access to personal information via ECR. There*

is no evidence of the use of mutual friends to obtain contact or contact details. In respect of the second access, there really is no justification in access given what would have been evident from the earlier access (if believed). Furthermore, the Registrant in her responses to these admitted allegations apparently accepts that her actions constitute serious misconduct. However, the NMC's case is that there was, in reality, no justification for accessing these records in the way asserted by the Registrant. As such and for the same reasons as Charge 1, both episodes of conduct constitute misconduct. The second is aggravated by the very fact of repetition;

- b. Charge 3, the disclosure of this information to a third party was without provocation and constitutes a disclosure of the most acutely personal information [PRIVATE]. The intent was to cause harm and embarrassment. It is of the utmost seriousness. It was treated as such by Person 1 and, additionally, by the complaint made by Patient A;*
- c. Charge 4 combined with Charge 9 demonstrates the dishonesty of the Registrant. The medical profession is reliant on honesty often in difficult situations, including when Registrants' practises are being challenged. Abusing honesty is correctly regarded as of the utmost seriousness. The Registrant has fallen significantly short in complying with this. As the panel have found the reason for the dishonesty was whole self-centred being "... to cover up for your denial during the meeting on 27 March 2019 that you had accessed Patient A's ECR" (p.53 of the Committee's reasons) and that these actions were "deliberate";*
- d. Charge 5 constitutes misconduct for the similar reasons to that of charge 1, above, albeit no complaint was made. Moreover, Patient B was*

vulnerable given the illnesses she suffered from and the fact that she was approaching the end of her life;

- e. Charge 6 constitutes the application of force to a colleague without any real justification and in the context of an argument. The incident was ultimately stopped by the verbal intervention of a third party. The effect of the incident on(Colleague 2)... is covered in the evidence and is reasonably significant, (see §16 at p.17 of Exhibit 1) whereby(Colleague 2)... suggests it impacted on her marriage and mental health;*
 - f. Charges 7, 8 and 11 constitute another instant of dishonesty whereby the Registrant was prioritising her own career and, no doubt, income at the expense of the honesty that this profession cherishes. The explanations provided by the Registrant are belied by the repetition of the dishonesty and its occurring over separate mediums (on a zoom meeting and in writing).*
- 12. As well as examining the charges individually, this committee will need to determine if the charges found proved constitute a series of momentary lapses or a deep-seated attitudinal issue. The NMC assert it is the latter by virtue of:*
- a. The repetition of the accessing of medical records of an individual was itself repeated across a close family member and a close personal associates. This repetition occurred over a reasonably lengthy period of 18 months between 2018 and 2019 (suggesting otherwise than a short period of personal crisis). Additionally, this repetition over time occurred for charge 5 when the Registrant was aware that concerns had been raised about her access of medical records without justification. In short, this is repetition over a significant period of time across multiple instances involving more than one individual and in the face of notice that the*

behaviour was a matter of concern. This is demonstrative of more than a personal crisis or a lapse of judgment, pointing instead to a more ingrained issue.

- b. The dishonesty in charges 4 and 9 constitutes dishonesty to avoid detection and discipline for past misconduct. It falls within a pattern of behaviour whereby the initial blanket denial is supplemented as and when incontrovertible facts are brought to the attention of the Registrant. Charges 7 and 8 together with charge 11 are a second and discrete course of conduct with a separate aim, namely to secure employment by concealing repeated disciplinary and regulatory action. Taken together they demonstrate a real concern that the Registrant has an habitual propensity towards dishonesty to protect her own interests demonstrative of a deep seated attitudinal issue.*

Conclusion:

- 13. For these reasons, the Committee are invited to find the Registrant's actions as found proved do individually and collectively constitute misconduct.'*

You stated that you disagreed with Mr Hoskins' submissions on misconduct and you submitted that your actions in the charges found proved did not amount to misconduct. You submitted that, in making its decision on misconduct, the panel should consider the submissions you had made at the fact-finding stage.

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

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:

'5 Respect people's right to privacy and confidentiality

As a nurse, midwife or nursing associate, you owe a duty of confidentiality to all those who are receiving care. This includes making sure that they are informed about their care and that information about them is shared appropriately.

To achieve this, you must:

5.1 respect a person's right to privacy in all aspects of their care

10 Keep clear and accurate records relevant to your practice

This applies to the records that are relevant to your scope of practice. It includes but is not limited to patient records.

To achieve this, you must:

10.5 take all steps to make sure that all records are kept securely

10.6 collect, treat and store all data and research findings appropriately

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,

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

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 appreciated that breaches of the Code do not automatically result in a finding of misconduct.

With respect to charges 2a and 2b, the panel noted that patient confidentiality is one of the fundamental tenets of the nursing profession as patients should be able to access clinical care with confidence that their private and confidential information is protected. The panel determined that your actions amounted to breaches of Patient A's privacy and confidentiality. It found that your conduct amounted to an abuse of your position as a registered nurse for your own personal gain and would be regarded as deplorable by other members of the profession. Accordingly, the panel determined that your conduct in charges 2a and 2b amounts to misconduct.

In relation to charge 3, the panel regarded your conduct as a serious abuse of your position of trust as a registered nurse. The panel bore in mind that patient confidentiality is a fundamental tenet of the nursing profession as patients should be able to access clinical care with confidence that their private and confidential information is protected and not exploited for personal benefit. Therefore, the panel determined that your conduct amounted to a serious breach of the fundamental tenets of the nursing profession, and it fell short of the fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. Accordingly, the panel decided that your conduct in charge 3 amounts to misconduct.

With regards to charges 4a and 9, the panel determined that you were not open and honest about your denial to Colleague A that you had accessed Patient A's ECR. The panel considers honesty, integrity and trustworthiness to be the bedrock of the nursing profession and, in being dishonest, it found you to have breached a fundamental tenet of

the nursing profession and you brought the nursing profession into disrepute. Therefore, the panel was in no doubt that your conduct in charges 4a and 9 amount to misconduct.

With respect to charge 4b, the panel was of the view that it was likely that your conduct was as a result of human error. The panel was therefore satisfied that your action in charge 4b was not sufficiently serious on its own to amount to misconduct. Accordingly, it determined that your action in charge 4b does not amount to misconduct.

With regards to charges 5a, 5b and 5c, the panel was of the view that notwithstanding the fact that Patient B was your family member, you are expected to maintain professional boundaries with your family members as a registered nurse. The panel determined that your conduct amounted to an abuse of position of trust and a breach of Patient B's privacy and confidentiality. Accordingly, the panel decided that your conduct in charges 5a, 5b and 5c amounts to misconduct.

In relation to charge 6, the panel found your conduct towards Colleague 2 to be unprofessional and unwarranted in a work setting as there were more appropriate methods to persuade Colleague 2 to have a private discussion with you. The panel noted that your conduct caused distress to Colleague 2 as she felt shocked and upset and your action left a red mark on her arm. The panel therefore found your conduct to be sufficiently serious and amounted to a breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. Accordingly, the panel determined that your conduct in charge 6 amounts to misconduct.

With respect to charges 7, 8a, 8b and 11, the panel determined that your conduct demonstrated a lack of accountability and transparency on your part as you sought to conceal that you were under investigation by the Trust and the NMC. The panel noted that registered nurses are expected to be open and honest at all times and answer any questions with respect to their role as a health professional, truthfully. The panel considered your actions to be extremely unprofessional, and that they would be seen as deplorable by other members of the profession. The panel considered that to characterise

your actions as anything other than misconduct would undermine public confidence in the nursing profession. Accordingly, it found your actions in charges 7, 8a, 8b and 11 to amount to misconduct.

Consequently, having considered all the charges individually and as a whole, the panel determined that your actions at charges 2a, 2b, 3, 4a, 5a, 5b, 5c, 6, 7, 8a, 8b, 9 and 11 did fall significantly short of the conduct and standards expected of a nurse and amounted to misconduct.

Submissions on impairment

Mr Hoskins 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 references to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin); *Cheatle v GMC*; *Cohen v General Medical Council* [2008] EWHC 581 (Admin) at paragraph 65; *Yeong v General Medical Council* [2009] EWHC 1923 (Admin) at paragraph 48.

Mr Hoskins further made the following written submissions with respect to impairment, which stated:

'Impairment Submissions:

9. *It is no answer to the sorts of misconduct that has been found proven that the Registrant's clinical practise is otherwise unimpeachable (which is the focus of many of the references provided in exhibit 3). Being a good practitioner clinically, although not irrelevant, simply does not address the areas of concerns identified by the facts found proved.*

10. *In terms of the insight demonstrated across all the types of misconduct, the Committee may feel that what has really been demonstrated is not that the*

Registrant has reflected, identified failings in her conduct, sought to identify means of addressing these failings and achieving these means. Instead, there is a fair amount of blame still directed at Patient A and Colleague 2 and what regret is being expressed is better explained as regret for the being caught rather than the wider issues in this case of the sorts of things outlined in Grant (supra).

- 11. To the extent that the Committee are able to identify any insight at all, this can hardly be said to be developed and appears to extend only to the Registrant's own interest and the effect of the allegations being made upon her life, rather than issues external to her. As such there is no real evidence of insight in this case to date.*
- 12. If the Committee accept the earlier submissions on the issue of misconduct that both the breach of confidentiality and the dishonesty are rooted in a deep-seated attitudinal issue it may justifiably feel that that is not easily remediable. Across all of the charges, (including the charge 6 conduct which appears more of a discrete incident), there is no evidence of any remediation to date notwithstanding that the Registrant has been in practise without complaint since the time of the allegations.*
- 13. The Committee have found that many of the misconduct charges are fundamental breaches of the standards of conduct expected of nurses in their decisions on misconduct.*
- 14. As such, the Committee can in no way be satisfied that the conduct would not be repeated. In short there remains a real risk of repetition of the behaviour complained of.*

Conclusion:

15. *For these reasons the NMC assert that this case cries out for a finding of current impairment based on the need to:*
- a. *declare and uphold proper standards in the profession; and/or*
 - b. *because of the final three limbs of the test in Grant, (see above) have been breached in the past and are liable to be breached in the future; and/or*
 - c. *the committee may consider that the approach the Registrant took to confidential medical information and the disclosure of the same in respect of Patient A risked harm and thereby breached the first limb of Grant at the very least in the past but, given the lack of remediation and insight, that risk remains in the future.'*

You submitted that your fitness to practise is not currently impaired. You noted that you had actively engaged fully with the NMC in its investigations and proceedings over the past five years. You highlighted that an interim suspension order was first imposed on your nursing practice in 2020, it was replaced with an interim conditions of practice order in 2021 and finally revoked in 2022. You submitted that you had apologised for your conduct in 2019. You invited the panel to take into consideration that prior to the incidents in 2019, you had demonstrated good character both professionally and personally. You highlighted that there have been no further concerns about your nursing practice since 2019.

You submitted that, since 2019, you had worked in Edge Water Nursing Home for eighteen months and you have had excellent references and appraisals from your employer, your manager and colleagues. You stated that you were seconded by your manager to undertake a doctorate programme in care for the elderly at Queen's University, Belfast, to support your nursing practice. You submitted that you have kept up to date with all your mandatory training including on manual handling, information governance and Cardiopulmonary Resuscitation (CPR).

You submitted that the panel should take into consideration the context of the incidents in 2019 as you were facing personal difficulties at that time. You submitted that the panel should also consider the length of time this case has taken to be completed and the impact that it has already had on your professional career, your personal life and your family. You submitted that you have had a five-year period to reflect on your actions and you now have full insight into the concerns. You referred the panel to your registrant response bundle. You submitted that you have learnt from your mistakes and would like to reassure the panel that you would do your best to show that you are now a competent nurse and want to remain on the register.

In response to questions from the panel, you stated that you worked at Edge Water nursing home till February 2022, your manager supervised your practice and was very supportive. You told the panel that you worked only two days a week at that time until the interim order was revoked and thereafter, you were able to work without supervision. You stated that you did not undertake any further Continuous Professional Development (CPD) training after 2021 as you took a year off to undertake teacher training in the Republic of Ireland to keep yourself busy. You stated that you were seconded to undertake a doctorate degree in which you focused on dental and foot care for the elderly and you are yet to complete your doctorate programme.

You stated that you completed your teacher training in 2023 and since then, you have not worked as a registered nurse. You explained that you decided to focus on participating in the NMC proceedings.

In terms of what you will do differently in a similar situation, you stated that, unlike in 2019, you now have more support and resources available to you to handle such challenging situations. [PRIVATE]. You stated that your reflective piece was not well structured because you were not provided any guidance on what to reflect upon and although you had previously undertaken reflections, you had only reflected on positive issues and never had to reflect on errors in your clinical practice.

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

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.

Registered 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.

The panel had regard to the NMC Guidance on Impairment especially the question which states:

'Can the nurse, midwife or nursing associate practise kindly, safely and professionally?'

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.'*

The panel first considered whether any of the limbs of the Grant test were engaged in the past. The panel noted that at the time of the incidents, your misconduct in accessing Patient A's medical records and disclosing her sensitive medical information to a third party caused emotional and psychological distress to Patient A. The panel was of the view that the nature of your misconduct was such that it had the potential to discourage Patient A from further seeking/accessing appropriate clinical care due to your breach of patient confidentiality. The panel therefore determined that your misconduct had placed Patient A at an unwarranted risk of harm and caused actual harm to her in terms of emotional and psychological distress.

The panel determined that your misconduct constituted a serious breach of the fundamental tenets of the nursing profession as you failed to uphold the standards and values of the nursing profession, thereby bringing the reputation of the nursing profession into disrepute. The panel had also found two charges of dishonesty proved against you and that they amounted to misconduct.

The panel therefore concluded that limbs a, b, c and d of the Grant test were engaged in the past.

The panel next considered whether the limbs of the *Grant* test are engaged in the future. In this regard, the panel considered the case of *Cohen v GMC* where the court addressed the issue of impairment with regard to the following three considerations:

- a. *'Is the conduct that led to the charge easily remediable?'*
- b. *Has it in fact been remedied?'*
- c. *Is it highly unlikely to be repeated?'*

The panel also considered the factors set out in the NMC Guidance on insight and strengthened practice (FTP-14). In the NMC Guidance – Can the concern be addressed (FTP-14a), the panel noted the following paragraph:

'In cases like this, and in cases where the behaviour suggests underlying problems with the nurse, midwife or nursing associate's attitude, it is less likely the nurse, midwife or nursing associate will be able to address their conduct by taking steps, such as completing training courses or supervised practice.

Examples of conduct which may not be possible to address, and where steps such as training courses or supervision at work are unlikely to address the concerns include:

-

-
-
-
- *dishonesty, particularly if it was serious and sustained over a period of time, or is directly linked to the nurse, midwife or nursing associate's professional practice*
-

The panel first considered whether your misconduct is capable of being addressed. The panel was of the view that your misconduct with respect to accessing patient records, disclosure of sensitive medical information and gripping a colleague's arm, could be addressed through a process of insightful reflections and retraining on patient confidentiality and conflict management. Therefore, the panel determined they were capable of remediation.

However, the panel noted that your dishonest actions were deliberate, sustained and occurred on more than one occasion, despite several opportunities given to you to be open and honest in your actions. In the panel's judgment, these are suggestive of deep-seated attitudinal concerns which are difficult to remediate.

The panel then went on to consider whether the concerns has been addressed and remediated. It had regard to the NMC Guidance – Has the concern been addressed (FTP-14b). [PRIVATE]. The panel further noted that you have had an otherwise unblemished career before the incidents and none of the concerns had been repeated. It also took into account that you had actively engaged with the NMC proceedings and that an interim suspension order was imposed on your nursing practice on 5 October 2020 and this order was replaced with an interim conditions of practice order on 5 March 2021. The interim order was finally revoked by the reviewing panel on 29 July 2022.

Regarding insight, the panel took into account your statement and your oral evidence. The panel considered that you made some admissions to some of the charges and had

apologised for your actions. You also recognised that your colleagues in the nursing profession and the wider public would be disappointed at your actions.

However, the panel noted that you had sought to provide justifications for some of your actions and also failed to demonstrate sufficient understanding of the seriousness of your misconduct. The panel further noted that you failed to demonstrate any insight into the impact of your conduct on Patient A, Colleague 2, the Trust, the nursing profession and the wider public. It was concerned that you did not provide any information about detailed steps you would take to prevent any of the concerns from re-occurring in the future or what you would do in a similar situation. The panel therefore determined that you failed to demonstrate sufficient insight into your misconduct.

The panel considered your registrant response bundle. It took into account the various positive testimonials made on your behalf, your work appraisals and several training courses you had completed. However, the panel noted that none of the testimonials were with respect to your nursing practice within the last two years as the most recent of them was made in 2022. It also noted that none of the training courses you had completed were in the areas of concern and were not up to date. Therefore, the panel attached little weight to your testimonials and training certificates given that it is considering current impairment as at today.

In light of this, the panel was not satisfied that any of the concerns had been remediated and that you had strengthened your nursing practice. Accordingly, the panel determined that your misconduct is highly likely to be repeated and limbs a, b, c and d of the *Grant* test are engaged in the future.

The panel therefore concluded 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 had regard to the serious nature of your misconduct and the public protection issues it had identified. It determined that public confidence in the profession, particularly as the misconduct involved breach of patient confidentiality and dishonesty, would be undermined if a finding of impairment were not made in this case. For these reasons, the panel determined that a finding of current impairment on public interest grounds is required. It decided that this finding is necessary to mark the seriousness of the misconduct, the importance of maintaining public confidence in the nursing profession, and to uphold proper professional standards for members of the nursing profession.

Having regard to all of the above, the panel was satisfied that your 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 your name off the register. The effect of this order is that the NMC register will show that your name 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.

Submissions on sanction

Mr Hoskins submitted that the most appropriate and proportionate sanction in this case is a striking-off order. He referred the panel to the NMC Guidance on Considering sanctions

for serious cases, in particular, '*Cases involving dishonesty*'. He submitted that the dishonesty in this case is very serious as it fulfils the criteria set out in the NMC Guidance.

Mr Hoskins submitted that the misuse of power could be linked to your conduct in accessing Patient A's medical records and revealing sensitive information to a third party. He submitted that you had also deliberately breached the professional duty of candour by covering up when things have gone wrong. He submitted that your dishonest conduct was also premeditated, systematic and long-standing deception in that you had deliberately sought to conceal that you were under investigation in order to secure future employment. He asserted that your dishonest conduct was neither opportunistic nor a spontaneous conduct as based on your own evidence, you knew full well what you were doing at the time of the incidents.

Mr Hoskins submitted that, in terms of mitigating factors, you have actively engaged with these proceedings but this is tempered significantly by the fact that your defence had been rejected so as to be found to be misleading in the context of clear factual findings. He submitted that there is another factor of your difficult personal circumstances at the time of the incidents and the distress which you experienced at that time. He however submitted that such factor only provides some limited justification as it does not serve as mitigation for your dishonesty over a sustained period of time. He submitted that another mitigating factor would be that you have had an otherwise unblemished career before the incidents, your previous good character and the fact that you had worked under an interim order and this was revoked. He however submitted that such factor is tempered by the fact that you stopped practising as a registered nurse two years ago without any reasonable explanation. Another mitigating factor would be the impact that a striking order could have on you and your family including your ability to gain employment as a registered nurse.

Mr Hoskins submitted that the aggravating factors in this case include your lack of insight into your misconduct, lack of reflection, lack of remorse and your propensity to shift the blame to others for your actions. He submitted that the panel should carefully consider the issue of your rejected defence and whether it could serve as an aggravating factor in this

case. He referred the panel to the NMC Guidance on Considering sanctions for serious cases, in particular, '*Cases involving dishonesty*'. He submitted that the panel had repeatedly rejected your evidence and this goes to continued dishonesty. He submitted that it does so by wrongly implicating and blaming others, falsely accusing witnesses during the course of the questioning, and in those circumstances, this is a case, rare though it may be, where the rejected defence does count as an aggravating feature to the allegations.

Mr Hoskins submitted that, in considering the available sanctions from the least restrictive order, taking no action and a caution order would be wholly inappropriate in this case given the seriousness of the concerns, the risks to the public identified in this case and the gravity of the misconduct and impairment.

Mr Hoskins submitted that a conditions of practice order would not be appropriate in this case given that the charges found proved were not in relation to your clinical practice. He highlighted that the panel had identified deep-seated attitudinal issues in this case and that a lack of insight into the concerns.

Mr Hoskins submitted that a suspension order would not be disproportionate but in this case, given the gravity of the concerns, your lack of insight and remorse and the fact that your misconduct was not a single incident but occurred over a period of time, if the panel decided to impose a suspension order, it should order a review.

Mr Hoskins submitted that a striking-off order is the most appropriate and proportionate sanction in this case. He referred the panel to the questions set out in the Sanctions Guidance, particularly on striking-off order. He submitted that the courts have supported decisions to strike off healthcare professionals when there's been a lack of probity, honesty or trustworthiness, notwithstanding that in other regards, there are no concerns about the professionals, clinical skills or any risk of harm to the public. He highlighted the case of *Parkinson v the Nursing Midwifery Council* [2010] EWHC 1898.

In conclusion, Mr Hoskins submitted that your misconduct raises serious concerns about your professionalism and attitude, both of which are fundamentally incompatible with you remaining on the register. He submitted that a striking-off order is the most proportionate sanction to maintain public confidence in the nursing profession.

You stated that you disagreed with Mr Hoskins' submissions on sanction. You submitted that you have shown insight into the mistakes you made in 2019 and you have fully engaged with the NMC and attended all required hearings. You submitted that you would like to reassure the panel that the incidents would not happen again, and you are willing to work with the NMC, under caution and guidance to ensure that you are not a risk to the public.

You invited the panel to take into consideration the mitigating factors at the time of the incidents. [PRIVATE]. [PRIVATE]. You submitted that the panel should also consider the length of time this case has taken to conclude which is a period of four to five years. You reassured the panel that you have since put resources in place to support yourself and your family if such situation should re-occur in future, and this demonstrates insight and reflection.

You submitted that you have apologised throughout the process and made efforts to make things right. You highlighted that you had requested for mediation at several times to resolve the issues you had with Colleague 2 but this was not facilitated by the Trust. You submitted that you had also apologised to Patient A and you currently have an amicable relationship with her.

You submitted that you have always followed the principles of good practice and you have kept up to date with your mandatory training and have done further training. You highlighted that you had worked under supervision during the period that your practice was under restrictions and faithfully complied with the Interim conditions of practice order, which led to its revocation. You submitted that you have made good progress and this was demonstrated through the several positive testimonials from your last employment at Edge

Water nursing home. You submitted that you have always had good character and you believe that you are a good nurse.

In conclusion, you invited the panel to consider imposing a conditions of practice order as this would enable you to seek work as a registered nurse. You submitted that a conditions of practice order would be workable and measurable as you would be able to utilise the opportunity to prove to the NMC that you are fit to remain on the register.

In response to the questions posed by the panel, you stated that you had apologised to Patient A and asked for mediation with Colleague 2. However, the Trust refused to facilitate it as they maintained that there should be no contact between you and her. You stated that the further training you had done, was not directly linked to nursing but you did it to keep yourself busy whilst you were not working. You stated that you had not sought work yet as you wanted to wait until the NMC proceedings were concluded.

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

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 identified the following aggravating features:

- Very limited insight, and no meaningful reflection, that is one which uses a recognised reflective cycle and purposefully addresses the charges as found proved, with regard to your misconduct.

- Very limited remorse with regard to your misconduct.
- Your actions demonstrated a pattern of misconduct over an extended period of time.
- Your actions demonstrated an abuse of your position of trust as a registered nurse and a misuse of the power this position entails.
- Your dishonest conduct was deliberate and occurred on more than one occasion

The panel also identified the following mitigating features:

- [PRIVATE].
- The incidents occurred during the period of the coronavirus pandemic.
- You have had an otherwise unblemished career prior to the incidents.
- No concern raised about your nursing practice since the incidents occurred.
- You made some admissions to some of the charges at the outset of the hearing.
- You stated that you had apologised to Patient A and requested mediation with Colleague 2.
- Positive testimonials although not current.

The panel had regard to the NMC Guidance on Considering sanctions for serious cases, in particular, '*Cases involving dishonesty*'. The panel found that your dishonest conduct was not a one-off incident nor was it a spontaneous action but involved two separate aspects of your practice. On one occasion, you acted dishonestly in an attempt to avoid the repercussions of improperly accessing a patient's medical records, and on the second occasion, you gave misleading oral and written responses to an employment agency in an attempt to improve your chances of securing employment. The panel was of the view that you deliberately breached the professional duty of candour by attempting to conceal from the Agency that you were under investigation by the Trust and the NMC, for your own personal gain.

The panel therefore found the dishonesty in this case to be serious and at the higher end of the spectrum of serious cases

The panel first considered whether to take no action but concluded that this would be inappropriate in view of the seriousness of the case. It had found that you had breached fundamental tenets of the nursing profession, and your misconduct would undermine the public's confidence in the nursing profession if you were allowed to practise without restriction. The panel therefore determined that it would neither protect the public nor be 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 nursing 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 decided 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 therefore determined that a caution order would neither protect the public nor be in the public interest.

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 relevant, proportionate, measurable and workable. The panel took into account the SG (SAN-3c), in particular:

'Conditions may be appropriate when some or all of the following factors are apparent:

- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *Identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining;*
- *No evidence of general incompetence;*
- *Potential and willingness to respond positively to retraining;*

-
- *Patients will not be put in danger either directly or indirectly as a result of the conditions;*
- *The conditions will protect patients during the period they are in force; and*
- *Conditions can be created that can be monitored and assessed.'*

The panel was of the view that although some of the charges found proved could be addressed through retraining and sufficient insight, your dishonest conduct and the deep-seated attitudinal concerns identified in this case could not be addressed through retraining and are difficult to remediate. The panel was of the view that although you had previously worked as a registered nurse under an interim conditions of practice order and that interim order was revoked, you have failed to demonstrate sufficient insight into the concerns and strengthen your nursing practice over the period of time you were allowed to practise without restrictions. The panel also noted that at the time the interim conditions of practice order was imposed, the charges were yet to be found proved as they were only allegations against you.

The panel therefore determined that given the seriousness of the concerns, the deep-seated attitudinal problems and your lack of sufficient insight into the severity and impact of your actions on Patient A, Colleague 2, the Trust, the nursing profession and the wider public, there were no relevant, proportionate, workable and measurable conditions that could be formulated. Accordingly, a conditions of practice order would not address the risk of repetition and this poses a risk of harm to patients' safety and the public. Consequently, the panel decided that a conditions of practice order would not protect the public nor be in the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG (SAN-3d) 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 noted that this was not a single instance of misconduct but a deliberate and repeated instances of misconduct over an extended period of time. It found that you had failed to demonstrate sufficient insight into the severity and impact of your actions and also failed to strengthen your nursing practice. It also found that your misconduct caused actual harm to Patient A in terms of psychological and emotional distress. In the panel’s judgment, your actions are suggestive of deep-seated attitudinal concerns which heightens the significant risk of repetition. The panel further noted that you had chosen not to work as a registered nurse since 2022 and you did not utilise the opportunity to reflect on your conduct, demonstrate insight into your actions and strengthen your nursing practice. Therefore, the panel was not satisfied that a period of suspension would serve any useful purpose.

Accordingly, the panel determined that a period of suspension would not be a sufficient, appropriate or proportionate sanction. It would neither protect the public nor satisfy the public interest consideration in this case.

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 was of the view that all of the criteria as set out above are met in this case.

In considering this sanction, the panel took into account that, until these incidents, you had an otherwise unblemished career and that there have been no further concerns raised about your nursing practice since the incidents occurred. [PRIVATE]. Notwithstanding, the panel had found that your actions constituted a serious breach of fundamental standards of professional conduct and behaviour that a registered nurse is expected to maintain. The panel found that your actions were significant departures from the standards expected of a registered nurse.

The panel concluded that the serious breach of fundamental tenets of the profession, evidenced by your actions and dishonest conduct, is fundamentally incompatible with you remaining on the register. The panel was of the view that the findings in this particular case raises serious and significant questions about your professionalism 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, 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 nursing 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 a striking-off order 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 standards of behaviour expected and required of a registered nurse.

This will be confirmed to you in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Hoskins. He submitted that, given the seriousness of the concerns and the panel's findings on misconduct and impairment, an interim suspension order for a period of 18 months is necessary in order to protect the public and otherwise in the public interest, to cover the 28-day appeal period before the substantive order becomes effective. He submitted that an interim conditions of practice order would not be appropriate and proportionate in this case given the findings of the panel on sanction.

You stated that you did not understand why an immediate order was necessary given that there have been no restrictions on your nursing practice for the last two years.

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

Decision and reasons on interim order

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 was therefore satisfied that an interim order is necessary for the protection of the public and is otherwise in the public interest.

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 in order to protect the public and otherwise in the public interest, during any potential appeal period. The panel determined that not to impose an interim order would be inconsistent with its earlier decisions.

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

That concludes this determination.