Nursing and Midwifery Council

Fitness to Practise Committee

Substantive Hearing

19 – 23 February 2018

29 October 2018

11 - 19 March 2019

23 – 24 July 2019

19 – 21 August 2019

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

Name of Registrant:	Marie Glennon
NMC PIN:	10I0624E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult - 16 September 2010
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Martin Parker (Chair, Lay member) John McGrath (Registrant member) David Evans (Lay member)
Legal Assessor:	Alain Gogarty (19 – 23 February 2019, and 29 October 2019) Ben Stephenson (11 – 19 March 2019, 23 – 24 July 2019 and 19 – 21 August 2019)
Panel Secretary:	Jodie Harrison (19 – 23 February 2018) Sophie Cubillo-Barsi (29 October 2018, 11 – 15 March 2019, 23 – 24 July 2019 and 19 – 21 August 2019) Edmund Wylde (18 – 19 March 2019)
Miss Glennon:	Present and represented by Kathryn Pitters, counsel, instructed by the Royal College of Nursing (RCN) (19 – 23 February 2018, 29 October 2018, 11 – 19 March 2019 and 23 July 2019)

	Represented by Emma Dmitriev (24 July 2019) Represented by Tom Buxton (19 – 21 August 2019)
Nursing and Midwifery Council:	Derek Zeitlin, Case Presenter (19 – 23 February 2018, 29 October 2018 and 11 – 19 March 2019) Katie Mustard (23 – 24 July 2019 and 19 – 21 August 2019)
Facts proved:	1.1, 1.2, 1.3, 2, 3.1 3.2, 3.3.3, 3.3.4 (in relation to 3.3.3), 3.4, 5.1, 5.3, 6.1, 6.2, 6.3, 7
Facts proved by admission:	3.5
Facts not proved:	3.3.1, 3.3.2, 4
No finding required:	5.2
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim Order:	Interim suspension order (18 months)

Details of charge (as amended):

That you, a registered nurse, whilst working in the Short Stay Medical Unit at South Essex Partnership NHS Foundation Trust (the Trust) between March 2012 and October 2014:

1. *On or around 17/18 February 2013 and in relation to Patient 1 who had difficulty breathing and was breathless, you:*

    1.1 rushed him to get washed and/dressed when you knew that he was breathless; [Proved]

    1.2 spoke to the patient in a confrontational manner; [Proved]

    1.3 when the patient's relative asked to speak to the nurse in charge, you told the patient's relative that the nurse in charge was attending to another patient when you knew this not to be true; [Proved]

2 *Your conduct at charge 1.3 above was dishonest. [Proved]*

3 *On 8 April 2013, and in relation to Patient 2 who required administration of Insulin at 08:00, you:*

    3.1 *failed to administer at the correct time; [Proved]*

    3.2 *thereafter provided misleading and/or dishonest explanations as to why you had so failed; [Proved]*

    3.3 *when Colleague A, a doctor, asked to see the patient's drug chart, you;*

        3.3.1 *raised your voice to Colleague A; [Not proved]*

3.3.2 *were aggressive towards Colleague A; [Not proved]*

3.3.3 *said to Colleague A "in that case you will give the drugs" or words to that effect, when you knew that it was your responsibility to administer the insulin; [Proved]*

3.3.4 *behaved as described above, in front of a patient; [Proved]*

3.4 *having been asked by Colleague A to administer the insulin immediately, did not administer it for approximately another 40 minutes. [Proved]*

3.5 *recorded that you had administered Insulin to the patient at the correct time when this was not so; [Proved by admission]*

4 your conduct in 3.5 above was dishonest in that:

4.1 you knew that you had not administered insulin to the patient at the correct time; [Not proved]

4.2 intended to create the impression that you had administered the insulin at the correct time. [Not proved]

5 On 9 April 2013, as the bleep holder for the falls sensor mats, you:

5.1 *failed to respond to a falls sensor mat bleeper and/or silenced the bleeper when it sounded without ensuring that it was responded to; [Proved]*

Or, in the alternative

5.2 *failed to report or escalate that the sensor mat and/or bleeper were not working correctly. [No finding required]*

5.3 *thereafter provided misleading and/or dishonest explanations for your failure at charge 5.1 in that you stated that the bleeper was broken when you knew this was not true; [Proved]*

6 On 10 April 2013, behaved inappropriately towards Colleague A, a doctor, in that you:

6.1 threw an envelope containing papers at colleague A, hitting the colleague's face; [Proved]

6.2 having acted as described in 6.1, proceeded to tell Colleague A "here, write the drug chart" or words to that effect in an inappropriate manner; [Proved]

6.3 reported your actions as described in 6.1 to Colleague B and laughed about it; [Proved]

7 Over the course of your employment with the Trust were aggressive and/or combative and/or generally failed to work collaboratively with colleagues on one or more of the following occasions, but not limited to:

7.1 a date in or around February 2013 and in relation to Colleague B and the care of Patient 3. [Proved]

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

Admissions

At the start of this hearing Ms Pitters, on your behalf, informed the panel that you admitted the following charges;

> 3.5 recorded that you had administered Insulin to the patient at the correct time when this was not so;

This charge was therefore announced as proved.

Decision and reasons on application to amend the charge

After the charges were read the panel noted a typographical error in charge 6.1 and proposed an amendment.

The proposed amendment was to replace the word ‘and’ in the charge to ‘an’. The proposed amendment would provide clarity and more accurately reflect the evidence.

> 6.1 threw ~~and~~ an envelope containing papers at colleague A, hitting the colleague’s face;

Mr Zeitlin, on behalf of the NMC, and Ms Pitters did not oppose the application.

The panel accepted the advice of the legal assessor that Rule 28 of the Rules states:

> 28.— (1) At any stage before making its findings of fact, in accordance with rule 24(5) or (11), the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) or the Fitness to Practise Committee, may amend—
>
> (a) the charge set out in the notice of hearing; or

(b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

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

The panel was satisfied that there would be no prejudice to you and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application under Rule 19

At the outset of the hearing Mr Zeitlin made a request that his application to adduce hearsay evidence and to hear a witness by WebEx be held in private. Mr Zeitlin made the request on the basis that proper consideration of the applications would require personal health matters to be disclosed to the panel in relation to Ms 2 and Ms 3. The application was made pursuant to Rule 19 of the Rules.

Ms Pitters indicated that you supported the application to the extent that the application pursuant to Rule 31 should be heard in private.

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

Rule 19 states:

> 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
>
> (2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.
>
> (2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—
>
> (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

(a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and

(b) having obtained the advice of the legal assessor, that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Having heard that there will be reference to Ms 2 and Ms 3’s health conditions, the panel determined to hold the applications pursuant to Rules 31 in private.

Decision and reasons on application to hear a witness by WebEx

The panel heard an application made by Mr Zeitlin, to allow Ms 2 to provide evidence to the panel via WebEx. Whilst the NMC had made sufficient efforts to ensure that this witness was present, Mr Zeitlin explained that because of her health conditions Ms 2 is unable to attend the hearing in person. He referred the panel to a [PRIVATE] dated 30 January 2018, which states:

"I understand that you have asked her to attend for two days at a hearing in the week beginning 19th February 2018. I do not really think that this is reasonable or realistic [PRIVATE]. I think that if you believe her evidence is vital then you will need to arrange for her to give evidence by video link."

Ms Pitters, on your behalf, did not oppose this application.

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

The panel gave the application in regard to Ms 2 serious consideration. [PRIVATE]. The panel considered whether you would be disadvantaged by allowing Ms 2 to provide evidence via WebEx and determined that, should Ms 2 provide evidence via WebEx, she would still be in the position to be cross-examined and the panel would be able to ask her questions.

In these circumstances, the panel concluded that it would be fair and relevant to allow Ms 2 to provide evidence via WebEx but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Mr Zeitlin under Rule 31 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended (the Rules), to admit the evidence of Ms 3 into evidence as hearsay.

Mr Zeitlin referred the panel to an email dated 15 February 2018 from a lawyer at the RCN who has been providing advice to Ms 3 in relation to her involvement in these proceedings. In the email he explains that Ms 3 is unable to attend the hearing either in person or via WebEx or telephone [PRIVATE].

Mr Zeitlin informed the panel that Ms 3's evidence is in relation to charges 1, 3 and 5. However, he submitted that there is evidence from other witnesses which is capable of corroborating Ms 3's evidence, and the panel, once having read the statement, will be able to make an assessment on the weight to give it without the need for Ms 3 to give live evidence. Mr Zeitlin accepted that if the application to admit the hearsay evidence were granted, you would be precluded from cross examining Ms 3.

Mr Zeitlin concluded that there were cogent reasons for Ms 3's inability to attend this hearing which is supported by the documentation provided. He submitted that the fact that Ms 3 cannot be cross examined can be taken into account in light of the other witnesses the panel will hear from.

Ms Pitters on your behalf opposed the application. She submitted [PRIVATE] that you would be prejudiced if Ms 3's evidence was admitted as hearsay as you would not have the opportunity to challenge that evidence.

Ms Pitters submitted that Ms 3's evidence is sole and decisive in respect of charge 1. She submitted that without Ms 3's evidence, the remaining evidence for charge 1 relies on accounts made by Patient 1 and the patient's relative, none of whom have provided statements to the NMC, therefore the charge is already reliant on hearsay evidence. Ms Pitters submitted that it is crucial for Ms 3 to attend the hearing as she was the nurse

who dealt directly with Patient 1 and his family, therefore Ms 3 should be required to attend the hearing to provide extra clarity and detail. Given the importance of Ms 3's evidence, Ms Pitters submitted it would be wrong for her statement to be admitted as hearsay evidence.

In relation to charges 3 and 5 Ms Pitters conceded that Ms 3's evidence was not sole and decisive. However, she submitted it would not be proper to admit Ms 3's evidence when there are other witnesses who can attend the hearing and be cross-examined.

Ms Pitters concluded that the application should be refused as it would be detrimental and prejudicial to you to admit the hearsay evidence of Ms 3, and invited the panel not to admit Ms 3's statement or the transcript in relation to the disciplinary investigation hearing she attended on 23 May 2013.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included the content of Rule 31 of the Rules

Rule 31 (1) provides the panel with a wide discretion to receive information. It states:

> "Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place)."

In so far as it is '*fair and relevant,'* a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred to the legal authorities of *Ogbonna v NMC [2010] EWCA Civ 1216*, *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*, and *Thorneycroft v NMC [2014] EWHC 1565.*

The panel accepted that the default position is that a witness should attend in person to give evidence. However, for various reasons that is not always possible and the panel has a discretion to accept hearsay evidence.

The panel had regard to the fact that the NMC has explored alternative routes through which this witness might give evidence, for example by telephone. [PRIVATE] The panel determined that the allegations are serious and there is a significant public interest in making progress with the case without undue delay.

This panel has made a careful assessment weighing up the competing factors contained in the respective submissions of Mr Zeitlin and Ms Pitters. It carefully considered the four matters set out at paragraph 45 in the case of *Thorneycroft*.

In considering *Thoneycroft*, the panel reviewed the following principles:

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

2. The fact that the absence of the witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but will not always be a sufficient answer to the objection to admissibility.

3. The existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However the absence of a good reason does not automatically result in the exclusion of the evidence.

4. Where such evidence is the sole or decisive evidence in relation to the charges, the decision whether or not to admit requires the Panel to make a careful assessment, weighing up the competing factors. The assessment should involve a consideration of the issues in the case, the other evidence to be called

and the potential consequences of admitting the evidence and the Panel must be satisfied having undertaken this assessment that, either the evidence is demonstrably reliable or that there is some means of testing its reliability.

The panel has made the careful assessment set out in *Thorneycroft* as follows:

The panel recognised that the admission of a statement of an absent witness is not a routine matter.

The panel considered the issue of fairness. The panel recognised that the NMC should be given the opportunity to present relevant evidence, however the absence of the witness means that you are not able to challenge such evidence.

The panel considered your objections could to some extent be dealt with by the weight to be attached to the evidence, although the panel recognised that this is only one factor to take into account.

The panel considered that there are reasons for the non-attendance of the witness. [PRIVATE]

The panel considered whether the evidence is the sole or decisive evidence in relation to the charges. Both parties accept that in relation to charges 3 and 5 it is not the sole or decisive evidence. The position in relation to charge 1 is less clear. The panel considered charge 1 and concluded that there may be evidence to support elements of charge 1 from other witnesses. The panel noted that this other evidence has yet to be presented by witnesses and tested.

The panel went on to consider whether the evidence is demonstrably reliable. The panel concluded that in relation to charges 3 and 5 there was other evidence which may be said to support the reliability of this witness evidence. This may also be the case in relation to parts of charge 1.

Mr Zeitlin on behalf of the NMC submitted that, in order to make a full assessment, the panel should read the witness statement in question. Ms Pitters, on your behalf, objected to this, saying to the panel that your concern was that the panel could not wholly disregard the statement once it had been read. The legal assessor noted that it was accepted practice that professional panels were capable of disregarding evidence if required.

The panel accepted that it may help the decision and so read the witness statement. Having done so, the panel concluded that on balance, weighing all of the above issues it was fair to admit this witness statement.

What weight to attach to it will be a matter for the panel to consider in due course.

Decision and reasons on application to adjourn

On day two of the hearing Ms Pitters made an application to adjourn this hearing until the morning of day three. Ms Pitters informed the panel that you are unwell and do not feel able to continue participating in the hearing or to provide further instruction. [PRIVATE]. Ms Pitters conceded that an adjournment will cause considerable difficulties so far as witness timetabling is concerned, however she submitted that she will not be able to perform her duty as counsel without you present, as you have been actively providing ongoing instructions throughout the proceedings.

Ms Pitters submitted that you have engaged and cooperated with the NMC throughout the investigation and have attended the hearing in person. She told the panel that you would like to be present during all of the witness evidence and continue to participate, but due to your ill health you do not feel able to continue at this time.

Mr Zeitlin submitted that there were a number of alternatives for the panel to consider. The first being that the hearing continues in your absence, however he acknowledged

that you do want to be here and wish to participate. The second alternative would be for the panel to hear the evidence of Dr 1 as she is present and will be unavailable to give evidence until the end of the week. The panel could then adjourn until tomorrow morning. Mr Zeitlin submitted that Ms Pitters should have sufficient instruction to cross-examine Dr 1 without you present. He outlined a provisional plan for the remaining witnesses which included the possibility of hearing some of the witness's evidence by video link.

Mr Zeitlin submitted that the alternative course of action would be for the panel to adjourn this hearing for a future date and attempt to find a date in which all of the witnesses can attend.

Mr Zeitlin submitted that ultimately an adjournment is a matter for the panel.

The panel accepted the advice of the legal assessor which included reference to the case of *R v Jones [2002] UKHL 5, Tait v Royal College of Veterinary Surgeons [2003] UKPC 34, GMC v Adeogba [2016] EWCA Civ 162* and Rule 32(4) of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended ("the Rules"), as follows:

32 (4)

(4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to–

(a) the public interest in the expeditious disposal of the case;

(b) the potential inconvenience caused to a party or any witnesses to be called by that party; and

(c) fairness to the registrant.

The panel considered the application carefully, having full regard to the information it heard from Mr Zeitlin and Ms Pitters.

The panel considered that given the circumstances, it was important for you to be in attendance in order to hear the witness's evidence and for Ms Pitters to be able to take your instructions. It bore in mind Ms Pitters submission that she would not be in a position to continue to fulfil her professional obligations as counsel without you present.

The panel decided to allow the application out of fairness to you as you have continued to engage and have been providing ongoing instructions to Ms Pitters.

The panel did take into account the effect this adjournment would have on the witnesses as this adjournment will cause inconvenience to all those called.

In reaching its decision, the panel considered the interests of the public in the expeditious disposal of this case, the inconvenience that would be caused to the NMC witnesses and the fairness to you. However, it determined that your interests in presenting a defence to what are serious allegations and overall fairness outweigh the public interest in these circumstances.

The panel therefore allowed the application to postpone this hearing until tomorrow morning at 09:30.

Decision and reasons on application to hear witnesses by WebEx

The panel heard an application made by Mr Zeitlin, to allow Dr 1 and Ms 4 to provide evidence to the panel via WebEx. He told the panel that Ms 4 had attended with the expectation to give live evidence on day one and two. Dr 1 had also attended with the expectation to give live evidence on day two of the hearing. However, due to the adjournment on day two, neither Ms 4 nor Dr 1 had the opportunity to give their evidence. They are no longer available to attend the hearing in person this week. Mr

Zeitlin told the panel that Ms 4 has made herself available to give WebEx evidence today, and Dr 1 has made herself available to give WebEx evidence in the afternoon of day five.

Mr Zeitlin reminded the panel that both witnesses were willing to give evidence in person, however due to the unforeseen circumstances on day two that led to the adjournment they are no longer available to attend in person this week. He submitted that although it is preferable for witnesses to attend a hearing in person, the panel will still be in a position to assess each witness's credibility and reliability by hearing evidence via video link.

Ms Pitters, on your behalf, opposed this application. She submitted that there is a factual dispute regarding the administration of the insulin and the documents relating to it. She also submitted that there is also some animosity between you and Dr 1 which has developed over a period of time. The issue for you is one of credibility, Dr 1's credibility needs to be tested which you say can only be done in person. Ms Pitters submitted that Dr 1 and Ms 4 should give their evidence in person.

The panel heard and accepted the advice of the legal assessor. He advised the panel that it must take into account the full circumstances that have led to the application being made as submitted by Mr Zeitlin, but must also factor in the objection made by Ms Pitters. He advised that the panel must remind itself of any possible limitations it may face when assessing the credibility of the witnesses if it were to hear their evidence by WebEx.

The panel gave the application serious consideration. It noted that Ms 4 and Dr 1 had previously attended the hearing but due to the circumstances of the case were no longer available to give evidence in person this week.

The panel bore in mind the history of the case that gave rise to the application and also considered the implications if it were to deny the application. It noted that if it were to

deny the application this could result in an adjournment which could negatively impact the witness's recall of events and the expeditious disposal of the case. It noted that it is already five years since the incidents which form the basis of the charges.

The panel considered the fairness to you and whether you would be disadvantaged by allowing the application. It determined that you would still have an opportunity to cross-examine the witnesses and continue providing ongoing instructions to Ms Pitters; therefore you would not be prejudiced by allowing the application.

In these circumstances, the panel concluded that it would be fair and relevant to allow the application. The panel recognise that Ms 4 and Dr 1 are witnesses to facts and were mindful of Ms Pitters submissions in relation to assessing their credibility. However, it was satisfied that it would be able to assess Dr 1 and Ms 4's demeanour, credibility and reliability over a WebEx.

Decision and reasons on application to adjourn

On day five of the hearing the panel heard a joint application for an adjournment.

Mr Zeitlin explained to the panel that Ms 7 who was expected to attend the hearing to give evidence today was no longer available due to difficulties in arranging childcare. Furthermore, Dr 1 who was expected to give evidence via WebEx was experiencing a number of technical difficulties. Despite support from NMC IT staff for more than an hour they were unable to secure a WebEx connection.

Mr Zeitlin submitted that he is no longer in a position to call any evidence and applied for the hearing to be adjourned.

Ms Pitters agreed with the application. She submitted that when the hearing resumes Dr 1 should be asked to attend the hearing in person. Although Ms 3's evidence was admitted into evidence as hearsay due to her health condition, Ms Pitters told the panel

that this may well have resolved itself by the time the hearing resumes. She submitted that Ms 3's evidence is crucial to charge 1 therefore the NMC should make the necessary attempts to secure her attendance.

Ms Pitters informed the panel that she is not available to represent you at the resuming hearing until 23 September. She submitted that you have worked together for 5-6 months and as the hearing is adjourning at such an inconvenient stage it would be dangerous for alternative counsel to take over. Ms Pitters explained that if the hearing was listed sooner than her availability and alternative counsel was required, there would be a risk of delays as alternative counsel may wish to approach the case differently and recall witnesses. She told the panel that in any event you are concerned about having to repeat instruction to new counsel at this late stage of proceedings and requested that the case resume after 23 September.

Ms Pitters submitted that she recognises there is a public interest in concluding this case expeditiously, but that the panel must balance the expeditious resolution of the hearing with the fairness of the outcome if alternative counsel were required.

Mr Zeitlin submitted that there would be plenty of time for you to provide adequate instruction to alternative counsel. Given that the witnesses who are yet to be heard are witnesses to fact, Mr Zeiltin submitted it would be better for the case to resume much sooner.

Mr Zeitlin confirmed that he did not wish to make an application for an interim order.

The panel accepted the advice of the legal assessor.

The panel considered the application carefully, having full regard to the information it heard from Mr Zeitlin and Ms Pitters.

Given the circumstances and that the hearing was due to go part-heard today the panel determined that the application for adjournment at this stage was reasonable. The panel decided to allow the application.

The panel then went on to consider the resuming dates. It found that the next available dates for the whole panel to resume would not be until late August 2018, shortly before Ms Pitters was available. The panel determined that to satisfy the interests of all parties it would be appropriate to resume at a date in which all parties are available, including Ms Pitters. For these reasons, the case will resume for 7 days on 29 October – 6 November 2018.

Hearing adjourned.

Adjournment of resuming hearing – 29 October 2018

On the morning of the resuming hearing, [PRIVATE] the Chair explained that there are two options available to the parties today. Firstly, the hearing can be adjourned until a later date, at a time when all parties and witnesses are available to attend. Secondly, the NMC may make attempts to replace an absent panel member in order to continue with today's resumed hearing.

Mr Zeitlin, on behalf of the NMC, submitted that the panel has previously heard the evidence of a large number of witnesses and that there is a live issue as to the honesty of the witnesses. He submitted that a replacement registrant panel member would be at a disadvantage in measuring the previous witnesses' demeanour and that this would not be fair to any party within these proceedings. Mr Zeitlin further informed the panel that the witnesses who have attended this morning are only available today and are unable to attend any other days this week.

Ms Pitters submitted that she supported the submissions made by Mr Zeitlin and agreed that this is not a case where it would be appropriate to obtain a replacement panel

member. Ms Pitters informed the panel that you have a wish to express that you have been under ‘incredible stress’ in relation to these proceedings. She further informed the panel that you had been offered employment as a registered nurse subject to the outcome of these proceedings and whilst you appreciate the circumstances, you are upset, stressed and feel you are now going to be disadvantaged financially due to you being unable to accept the said offer of employment.

The panel accepted the advice of the legal assessor.

The panel considered the application carefully, having full regard to the strong representations made by Mr Zeitlin and Ms Pitters. The panel noted your personal circumstances and acknowledged Ms Pitters’ submission that you would be at a ‘disadvantage’ by adjourning today. However, the panel noted that the circumstances which have arisen are unfortunate and unforeseen. The panel accepted Mr Zeitlin’s submissions that a replacement registrant panel member would be at a disadvantage in measuring previous witnesses’ demeanour. Whilst the panel acknowledged that both you and the witnesses who have attended today will be at a disadvantage by adjourning these proceedings, the panel determined that this would be the most appropriate and proportionate response.

Hearing adjourned.

Resumed hearing 11 March 2019
Decision and reasons on application to hear Colleague A by WebEx

Before hearing evidence from Colleague A via WebEx, Ms Pitters asked the panel to revisit its decision in this regard. She reminded the panel that when the decision was made to allow Colleague A to give evidence via WebEx in February 2018, the reasons given for her non-attendance were ‘professional commitments’. Ms Pitters submitted that, other than being informed that Colleague A is unable to attend in person today because of work commitments, no other ‘good’ evidence has been provided. Ms Pitters

submitted that after the hearing was adjourned in October 2018, the NMC should have taken the necessary steps to ensure that Colleague A could attend to give evidence in person today. Ms Pitters submitted that Colleague A is an important witness and that the issue remains in relation to her credibility. Ms Pitters indicated to the panel that during her cross examination, she would be questioning Colleague A's truthfulness and submitted that the 'best evidence' would be obtained by way of Colleague A attending the hearing in person.

Mr Zeitlin reminded the panel that Colleague A attended these proceedings in February and October 2018, in person, in order to give evidence to the panel but was not called upon. He informed the panel that at the time your hearing was adjourned in October 2018, Colleague A did not know about the work commitment which has prevented her from attending in person today. Mr Zeitlin submitted that the decision to allow Colleague A to give evidence via WebEx has already been made and that Colleague A has acted entirely appropriately regarding her non-attendance.

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

The panel gave this application serious consideration, taking account of the current circumstances and the objections raised by Ms Pitters. It noted that Colleague A had previously attended the hearing twice but that due to the circumstances of the case, it had not been possible to hear her evidence. The panel noted its previous determination in relation to this issue. The panel had no significant new information to undermine its previous decision and noted that the matters of this case are some six years old years. In the particular circumstances of this case, the panel determined that it would be fair and relevant to allow Colleague A to attend via WebEx.

Decision and reasons on application pursuant to Rule 31

The panel heard an application made by Mr Zeitlin under Rule 31 of the Rules to allow the written statement of Ms 7 into evidence. Mr Zeitlin informed the panel that Ms 7 had

recently been in a car accident and was therefore unable to provide evidence in person. He reminded the panel that Ms 7 has attended these proceedings twice previously with the intention of providing evidence in person but that, due to the circumstances of the case, she was unable to do so. Mr Zeitlin submitted that Ms 7's witness statement should be read in conjunction with the notes of the investigation meeting which was held with Ms 7 on 23 May 2013. He asked the panel to admit Ms 7's witness statement as hearsay evidence.

Ms Pitters opposed the application. She submitted that Ms 7 provides evidence to key issues which the panel are yet to determine, including charges of dishonesty. Ms Pitters reminded the panel that you had previously made a complaint about Ms 7's practice to Trust management. She submitted that this is relevant as it demonstrates an example of you raising concerns about the Unit in general and supports your assertion that the allegations which you face today are as a result of the Trust attempting to 'get rid of you'. Further, Ms Pitters stated that Ms 7 knew that you were the individual who raised concerns about her practice, specifically that she was falsifying documents, and that your complaint was made prior to her raising concerns about you mistreating a patient. It is your case that Ms 7 had a motive to make up the allegation which she put forward during the investigation meeting held on 23 May 2013. Ms Pitters submitted that Ms 7's credibility remains an issue and that it is only fair that you are afforded an opportunity to cross examine Ms 7. [PRIVATE]

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included the content of Rule 31 of the Rules

Rule 31 (1) provides the panel with a wide discretion to receive information. It states:

> "Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such

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

In so far as it is '*fair and relevant,'* a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred to the legal authorities of *Ogbonna v NMC [2010] EWCA Civ 1216*, *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*, and *Thorneycroft v NMC [2014] EWHC 1565.*

The panel gave the application in regard to Ms 7 serious consideration. The panel noted that Ms 7's evidence is relevant to charges 1, 5 and 7. The panel bore in mind that it has heard evidence from other witnesses about matters to which Ms 7's evidence appears to relate. It determined that, whilst Ms 7's evidence is not 'sole and decisive', it is 'relevant'. The panel took into account Mr Zeitlin's submissions that Ms 7 had attended these proceedings twice previously in order to provide evidence in person. [PRIVATE] It had no reason to question her explanation for her non-attendance in light of her previous willingness to assist in these proceedings.

The panel noted that the investigation meeting notes are not signed by Ms 7. However, Ms 7's witness statement, produced in preparation for this hearing, was signed and confirmed the fact that Ms 7 had read through the investigation meeting notes and that the notes were accurate. The panel acknowledged that you would be denied the opportunity to cross examine Ms 7 should it allow Mr Zeitlin's application. However, it reminded itself that you or Ms Pitters would be able to make submissions and offer further evidence in relation to Ms 7's evidence at a later stage.

The panel accepted that the default position is that a witness should attend in person to give evidence and that admitting a statement as hearsay should not be a routine matter. The panel accepted that there are reasons for Ms 7's non-attendance. It noted that her evidence is not sole or decisive. The panel concluded that the reliability of Ms 7's evidence can be tested as several other witnesses provide evidence in relation to the

same issues as Ms 7. For these reasons, the panel has decided that it is fair and relevant to allow Mr Zeitlin's application. The panel determined that it would give Ms 7's evidence what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application pursuant to Rule 31

At the outset of the hearing on 13 March 2019, Mr Zeitlin provided the panel with an update as to Ms 3's availability to provide evidence in person. Despite informing the panel yesterday that Ms 3 was willing to attend these proceedings in person today, Mr Zeitlin submitted that this may have been a misunderstanding. He referred the panel to an email from an NMC case officer, dated 12 March 2019, within which he explains:

[PRIVATE]

Mr Zeitlin informed the panel that Ms 3 is willing and available to give evidence this morning. He reminded the panel that it had already made a determination in February 2018, that Ms 3's witness statement could be admitted as hearsay evidence. Mr Zeitlin submitted that allowing Ms 3 to provide evidence via telephone would be an improvement to the current stance and that a professional panel will be able to assess Ms 3's credibility by the way in which she answers the questions put to her.

Ms Pitters opposed the application. She submitted that the panel have no evidence before it to support Ms 3's assertion that she is unable to give evidence in person. Ms Pitters reminded the panel that Ms 3 is currently working as a registered nurse, within a role that requires her to travel to and from work. She invited the panel to refuse the application and exclude Ms 3's witness statement from these proceedings.

The panel heard and accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. This included the content of Rule 31 of the Rules.

Rule 31 (1) provides the panel with a wide discretion to receive information. It states:

> "Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place)."

In so far as it is '*fair and relevant,'* a panel may accept evidence in a range of forms and circumstances, whether or not it is admissible in civil proceedings. The legal assessor referred to the legal authorities of *Ogbonna v NMC [2010] EWCA Civ 1216*, *R (Bonhoeffer) v GMC [2011] EWHC 1585 (Admin)*, and *Thorneycroft v NMC [2014] EWHC 1565.*

The panel gave the application in regard to Ms 3 serious consideration. The panel noted that Ms 3's evidence is relevant to charges 1, 3 and 5 and that she had some direct involvement with the incidents as Ms 3 was the nurse in charge at the relevant time. However, the panel bore in mind that it has heard evidence from other witnesses about the matters to which Ms 3's evidence appears to relate and determined that her evidence was no 'sole and decisive' in this regard.

The panel noted that Ms 3's statement had been prepared in anticipation of being used in these proceedings and contained the paragraph 'This statement consisting of five pages is true to the best of my information, knowledge and belief' and was signed by her. It recognised Ms Pitters' submission that both Ms 3's credibility and some of her witness statement is in dispute. However, it determined that by Ms 3 attending via telephone, you would still have the opportunity to cross examine the evidence Ms 3 provides.

The panel appreciates that the default position is that a witness should attend in person to give evidence, and that allowing a witness to attend via telephone should not be a routine matter. The panel accepted that there are reasons for Ms 3's inability to attend in person. [PRIVATE]

The panel noted its previous decision, made in February 2018, to allow Ms 3's witness statement as hearsay evidence and determined that excluding her evidence from the proceedings would be inconsistent with its earlier finding. For these reasons, the panel has decided that it is fair and relevant to allow Mr Zeitlin's application. The panel determined that it would give Ms 7's evidence what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Decision and reasons on application under Rule 19

Before hearing evidence from Ms 3, the panel heard an application from Ms Pitters to hold a part of your hearing in private so that she could disclose information to the panel relating to your health and private matters. The application was made pursuant to Rule 19 of the Rules.

Mr Zeitlin indicated that he supported the application to the extent that any disclosure of your health and/or private matters, should be heard in private.

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

Having heard that there will be reference to your health and personal matters, the panel determined to hold this part of the hearing in private.

[PRIVATE]

Background

The charges relate to your employment at the Short Stay Medical Unit (the Unit) at South Essex Partnership NHS Foundation Trust (the Trust). A number of concerns were raised regarding your practice.

One of those concerns was in relation to your attitude towards other members of staff. It is alleged that your behaviour was often 'erratic' and that you would become frustrated, aggressive, and unprofessional.

Allegations were also raised in relation to your interaction with Patient 1 on or around 17/18 February 2013, which resulted in a complaint from the patient's relative. Patient 1 made a complaint to Ms 7 and stated that he was unhappy about the way in which you spoke to him and that you had allegedly forced him out of his bed in order to have a shower. It is your case that you were not verbally aggressive towards the patient but accepted that the Patient 1 had become distressed, at which point you helped him return to his bed. It is further alleged that on 17 February 2013, Patient 1's relative asked to speak with Ms 3, the nurse in charge. You allegedly informed the relative that Ms 3 was attending to another patient. Patient 1's relative subsequently spoke with a healthcare assistant who allegedly informed her that that Ms 3 was on a break. Patient 1's relative became concerned that you had lied to her and found this inappropriate.

It is further alleged that on 8 April 2013, you failed to administer insulin at the correct time to Patient 2. It is alleged that Patient 2 was due to be administered insulin at 08:00. However, it is alleged that, whilst conducting a medical round around 09:30, Colleague A noticed that Patient 2's Patient Administration and Monitoring Record for Insulin indicated that insulin had not yet been administered. When questioned, you stated that you had been dealing with another patient who had suffered a fall and that you were therefore unable to administer the insulin at the relevant time. It is alleged that this explanation was misleading as, upon reviewing the records, there was no evidence that the patient in question had fallen that day. Upon further investigation, it was noted that

the patients records evidenced that the patient had suffered a fall but at 19:00 the following evening, not on the morning of 8 April 2013, as indicated by you. It is alleged that, when questioned by Colleague A about Patient 2's drug chart, you raised your voice and acted aggressively.

It is further alleged that on 9 April 2013, you failed to respond to a sensor mat bleeper. Ms 4 alleges that a sensor mat is used for patients at risk of falls and that when a patient attempts to mobilise, the bleeper sounds an alarm to alert the nurse that the patient has mobilised. It is also alleged that the nurse with responsibility of the bleeper must immediately attend the patient to ensure they are not at risk of falling. You allegedly had the responsibility for the bleeper on 9 April 2013. It is alleged that you silenced the beeper on numerous occasions. When questioned during the local investigation, you stated that the bleeper was making a sound to notify of low battery and that is why you silenced the alarm. It is alleged that, when the bleeper was checked, it was 'fully functional'.

A further allegation relates to an incident which occurred on 10 April 2013. It is alleged that on this day, you threw an envelope containing papers at Colleague A, hitting her in the face. This action, and your subsequent dealings with Colleague A, is said to be inappropriate.

As a result of these incidents, an investigation was commenced. You attended an investigatory meeting on 5 July 2013. Matters proceeded to a disciplinary hearing.

Decision on the findings on facts and reasons

In reaching its decisions on the facts, the panel considered all the evidence adduced in this case together with the submissions made by Mr Zeitlin, on behalf of the NMC and those made by Ms Pitters on your behalf.

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

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 the facts will be proved if the panel was satisfied that it was more likely than not that the incidents occurred as alleged.

The panel heard evidence from eight witnesses tendered on behalf of the NMC. In addition, the panel heard oral evidence from you.

Witnesses called on behalf of the NMC were:

- Colleague A, (via WebEx), Senior House Officer.
- Colleague B, Band 5 Nurse;
- Ms 2 (via WebEx), Band 7 Senior Pharmacist;
- Ms 3 (via telephone), Band 6 Nurse;
- Ms 4 (via WebEx), Head of Adult Locality Services;
- Ms 5, Team Lead;
- Ms 6, Assistant Director (at the time of the charges);
- Ms 8, Senior HR Advisor;

The panel also accepted the statement of Ms 7 (Healthcare Assistant) as hearsay.

The panel first considered the overall credibility and reliability of all of the witnesses it had heard from, including yourself.

The panel noted that it had asked the NMC to provide a signed and dated copy of Ms 6's and Ms 4's witness statement on a number of occasions from February 2018 onwards. The NMC have not provided this. The panel considered whether this affected the weight that it might give to the statements. However, it was satisfied that the case presenter had confirmed with both witnesses, at the start of their evidence, that their statements were true to the best of their knowledge and belief.

The panel found Colleague B to be a credible, reliable and balanced witness. It noted that Colleague B did not seek to embellish her evidence and was able to assist the panel in relation to charge 5, 6 and 7.1.

Ms 2 had very little recollection of the incidents. She stated that she ‘was not a diabetic pharmacist’ and was therefore unable to answer a number of questions about insulin. In light of this, the panel determined that Ms 2 provided very limited relevant evidence.

Whilst Ms 3 provided evidence via telephone, the panel found Ms 3 to be a credible and reliable witness. She was clear and consistent in the evidence she provided and was able to give detailed responses to questions put to her.

The panel found Ms 4 to be clear and consistent in the evidence she provided. Whilst she was not a direct witness to any of the charges, she attempted to assist the panel to the best of her ability.

Ms 5 assisted the panel to the best of her ability and the panel noted that she was supportive of you during your employment. Whilst Ms 5 struggled to recall specific details about relevant incidents, the panel found that she was a credible and reliable witness.

The panel noted that Ms 6 had not met you prior to the disciplinary hearing and neither was she a direct witness to the charges. However, the panel found that Ms 6 was a credible witness who provided balanced evidence.

The panel noted that Ms 8 was not a witness to any of the events included within the charges. However, the panel found that Ms 8 was confident in the answers she provided and determined that she was a credible and reliable witness.

The panel found Colleague A to be a calm and credible witness, who was assertive and consistent in the evidence she provided. The panel was assisted by the evidence Colleague A provided.

In addition, the panel heard oral evidence from you.

It was your evidence that staff within the Ward wanted you to be dismissed from the Trust. You explained that this was because you were someone who would regularly complain about practices within the Ward and patient safety. It was your evidence that the frequency and escalation of your complaints made you an unpopular member of staff.

The panel found that much of your evidence lacked focus. It noted that there were a number of inconsistencies between your oral evidence and the documentary evidence submitted both to the Trust and the NMC.

The panel went on to consider the remaining charges. The panel considered each charge and made the following findings.

Charge 1:

1. *On or around 17/18 February 2013 and in relation to Patient 1 who had difficulty breathing and was breathless, you:*

Sub-Charge 1.1

1.1 *rushed him to get washed and/dressed when you knew that he was breathless;*

Sub- Charge 1.2

1.2 *spoke to the patient in a confrontational manner;*

These sub-charges are found proved.

The panel considered sub-charges 1.1 and 1.2 collectively, as invited by both Ms Pitters and Mr Zeitlin.

The panel noted the witness statement of Ms 3, within which she states:

> *I received a complaint from a patient regarding the way the Registrant had spoken to him. The patient felt that the way she had been spoken to him was inappropriate and that the Registrant had been confrontational and hard to deal with. The Registrant had got the patient washed and dressed. The patient had some difficulty breathing and as a result was very breathless. He found it rather distressing when he could not catch his breath and he felt that the Registrant had pushed him too much too quickly.*

The panel further noted the witness statement of Ms 5, within which she states:

> *During the shift, a daughter of a male patient had raised the fact that she felt her father had been treated roughly and aggressively. The daughter and the patient felt that the Registrant had bullied the patient, had rushed the care she provided to him and not listened to the patient.*

You deny both allegations. It is your case that, as no statement was taken from Patient 1 and/or his relative, the evidence in relation to charge 1 is hearsay evidence. It is your case that it is unclear whether Ms 7's statement relates to what she was told or what she saw on that day. You explained during your evidence that you would not act in such a way as described within the charge.

During your oral evidence you stated that Patient 1 may have misunderstood your manner and your refusal to provide him with additional oxygen. You explained that you

were not prepared to provide Patient 1 with more oxygen as this would have led to him becoming more confused and his condition worsening.

The panel considered the fact that neither Ms 5, Ms 3 nor Ms 7 were direct witnesses to the incident and that the evidence is relation to this charge is hearsay evidence.

When considering what weight, if any, it should give to Ms 7's evidence, the panel considered your evidence that Ms 7 is a 'proven liar' and unreliable witness. You provided the panel with evidence which you said demonstrates that Ms 7 had falsified documents. This evidence was not challenged by the NMC. However, the panel was satisfied that Ms 7's evidence in relation to these charges was reliable. It determined that had Ms 7 lied about Patient 1's presentation, this would have quickly been discovered by Ms 3, to whom Ms 7 reported the incident and who could have established easily and quickly whether the allegation was an invention of Ms 7 by addressing the patient - which she later did. Ms 3, Ms 7 and Ms 5 each spoke with Patient 1 individually and their evidence regarding the patient is consistent.

The panel next considered your evidence that Patient 1 was 'confused' at the time the charges arose.

The panel noted that Ms 3 instigated a Patient and Liaison Service (PALS) and Safeguarding of Vulnerable Adults (SOVA) investigation following the incident. The panel noted that the evidence from Ms 5 was that you would be "managed formally" following the outcome of the SOVA review. The panel made reference to your 'History of Management', provided by Ms 5, within which it is stated that:

> *SOVA completed by social worker on the unit. They feel that this was a vulnerable adult and that he had suffered emotional abuse due to Marie's attitude.*

The panel was of the view that this record demonstrates that there was no state of confusion but rather that your attitude was such that sufficient concerns were present to make the incident a formal issue. The panel noted that there was nothing in the records to indicate that Patient 1 was confused. The panel was reminded that the patient gave a consistent account to Ms 3, Ms 7 and Ms 5.

Patient 1's account of your behaviour was sufficiently alarming to Patient 1's relative that she felt the need to report your behaviour. Whilst the panel acknowledged your defence, it determined that it was more likely than not that you did behave as charged and therefore find both sub-charges 1.1 and 1.2 proved.

Sub-Charge 1.3

1.3 *when the patient's relative asked to speak to the nurse in charge, you told the patient's relative that the nurse in charge was attending to another patient when you knew this not to be true;*

This sub-charge is found proved.

When determining this charge, the panel referred to the notes of the Investigation Meeting, dated 5 July 2013, within which a note is made of your response, specifically:

> *She told me she wanted to see the Sister in Charge. I believe the said Sister was with a patient so went to the room I believed her to be in, when I got there I was told by a nurse that she had gone on her break. Due to the aggressive nature of the family member I felt awkward telling her the nurse was on a break, I thought it might irritate her and I was unsure how she would react, stupidly I told the patients family member that Sister was still with the patient and would talk to her in just a few minutes. The family member said she wasn't leaving the nursing desk and stood waiting for the sister. I went straight into the staff room and told the band 6 what I had told the lady and why, letting her know that the lady was*

quite aggressive. She was eating her lunch and said she would come and speak to the lady when finished. I continued with my nursing duties about ten minutes later I returned to the nursing desk, the band 6 was still in the staff room. I saw the lady speaking with two HCA's as I approached she started shouting at me that I was a liar and she was raising her voice and asking why I lied to her. I gathered she was talking about what I had said about the band 6. I did not want the situation to become any worse so I apologised profusely to her without giving a reasons, she kept asking me if I knew, at this stage the band 6 heard raised voices and came out of the staff room and took the lady into the office.

You deny this allegation. Miss Pitters submitted that, during Ms 3's cross examination, she accepted that she had in fact attended to another patient. It is your case that whilst Ms 3 believed that you lied, you had in fact simply been mistaken. The panel also considered your oral evidence, where you offered a different account, saying that, as you were at the nurses' station working at the computer, you would not have noticed Ms 3 walking past you on her way to the staff room.

Whilst the panel acknowledged your defence, it noted that the Investigation Meeting notes, dated 5 July 2013, were signed by you and declared as a statement of truth. At the time the meeting was held, you would have had time to reflect on the incident and prepare for the interview. It determined that your statement during this meeting suggests that you knew what you had said was false and that this was supported by the fact that you 'profusely apologised' to the patient's relative. In light of the evidence, the panel find this charge proved, on the balance of probabilities.

Charge 2

2 Your conduct at charge 1.3 above was dishonest.

This charge is found proved.

When making a decision in relation to this charge, the panel considered all of the oral and written evidence before it.

You deny this allegation. It is your case that you 'simply made a mistake' as to Ms 3's whereabouts.

The panel acknowledged your defence. However, in light of its determination at charge 1.3, it was satisfied that you knew what you were saying was false. This was supported by the investigation meeting notes dated 5 July 2013. The panel was of the view that you deliberately attempted to delay the complaint being made and, applying the objective standards of ordinary, decent people, the panel was satisfied that you acted dishonestly, on the balance of probabilities. The panel concluded that your contradictory evidence, provided to the panel, as to why you told the relative that Ms 3 was with a patient is further supports its finding that you acted dishonestly at the time.

Charge 3

3 On 8 April 2013, and in relation to Patient 2 who required administration of Insulin at 08:00, you:

Sub-Charge 3.1

3.1 *failed to administer at the correct time;*

This sub-charge is found proved.

When making a decision in relation to this charge, the panel first considered whether you had a duty to administer the insulin. The panel again referred to the notes of the investigation meeting held on 5 July 2013, within which you state (in relation to the administration of the medication):

I understand it would have been my responsibility to administer that insulin.

You deny this allegation. You accept that the medication chart stated that the blood sugar levels should have been checked at 08:00 and insulin administered before breakfast. However, it is your case that you were not on duty at 08:00 on 8 April 2013 and that, when you attended to Patient 2, it would have been medically incorrect to administer insulin at that time.

The panel acknowledged your defence. It noted that, during the course of the internal investigation, it was your case that another patient had fallen in the unit and that, as you were dealing with this patient, it would have been someone else's responsibility to administer the said medication. However, the panel considered the fact that during the conduct hearing held on 25 June 2014, you accepted that the patient had not fallen on the morning of 8 April 2013 and gave an alternative reason for not administering the insulin at the appropriate time, in that you were dealing with "CDs, MSTs".

During your oral evidence within these proceedings, you provided another explanation as to why you did not administer the insulin. It was your evidence that you were late arriving to your shift and explained that 'without seeing the sign in sheet, I cannot tell…perhaps I was fifteen to twenty minutes late.' When questioned in relation to this submission, Ms 3 stated in her oral evidence that handover was at 07:45 to 08:15. When questioned by Ms Pitters, Ms 3 confirmed that if the time you started your shift was not in her witness statement, then it should be assumed that you started your shift at 07:45. This assertion is supported by Ms 3's witness statement, within which she states:

> *The handover in the morning at SMU occurs between 07:45 and 08:15. The nurses are allocated either the male or female end of the ward and there is a healthcare assistant assigned to each nurse. In addition, there is a nurse in charge and a doctor on duty. On this day the Registrant was in charge of the male patients.*

The panel did not accept your numerous explanations as to why it was not your duty to administer the insulin. It was satisfied, in light of your own testimony and evidence before it that you did have a duty to administer the insulin on the morning of 8 April 2013. The panel next considered whether you failed to administer the insulin. It considered the witness statement of Ms 3, within which she states:

> *It became clear that the Registrant had not administered the insulin. This occurred at about 09:30 in the morning. The Registrant informed us that she was about to administer the medication but I cannot remember if she gave a reason for the late administration.*

It further noted the witness statement of Colleague A, within which she states:

> *The drug chart was not with the patient and it became clear that the Registrant had the drug chart, despite attending a different patient. I went to ask the Registrant for the drug chart and it was clear that the morning dose of the insulin had not been given to the patient, I told the Registrant that she needed to give the patient their insulin as a matter of priority. I also explained that this was vital because of the poor health of the patient. Insulin, as a medication, is very important to be administered at the same time every administration.*

The patient's records and charts do not specifically record the time that the insulin was administered. However, the panel was satisfied from the evidence of Colleague A, Ms 3, and your own evidence that it was not given before breakfast as required and was, in all probability, given at around 10.15. Therefore the panel found this charge to be proved, on the balance of probabilities.

Sub-Charge 3.2

3.2 *thereafter provided misleading and/or dishonest explanations as to why you had so failed;*

This sub-charge is found proved.

You deny this allegation. It was initially your case that on the day of the incident a patient fell and disrupted your shift. You explained that, when providing your first account in relation to this incident at the Trust investigation, you were 'confused' and found the process 'difficult' as you did not have all the relevant information before you.

The panel accepted that there may have been a genuine error in the first instance. The panel considered that the continual change of story, including the latest version of events given by you at this hearing, strongly suggests a dishonest attempt to justify your actions. The panel preferred the consistent evidence from Ms 3 and Colleague A, as to the sequence of events, over the numerous explanations that you have given at different times since the incident.

In the panel's view, it is difficult to find an alternative innocent explanation for the various stories put forward by you. On the balance of probabilities, the panel concluded that the different explanations given by you do amount to dishonesty and would be considered as such by ordinary decent people.

The panel therefore concluded that this charge was found proved, on the balance of probabilities.

Sub-Charge 3.3:

3.3 *when Colleague A, a doctor, asked to see the patient's drug chart, you;*

Sub-Charge 3.3.1:

3.3.1 raised your voice to Colleague A;

Sub-Charge 3.3.2:

3.3.2 were aggressive towards Colleague A;

These sub-charges are found not proved.

The panel considered that, due to their inextricably linked nature, these two sub-charges ought to be considered together.

The panel accepted Ms Pitters' submissions that you can be assertive and forceful at times. It also bore in mind that it had evidence from Colleague A, Colleague B, and Ms 5 that you can be "aggressive and inappropriate", "rude and challenging", and "unprofessional with colleagues".

With this background in mind, the panel considered the evidence relating to these charges, which comes solely from Colleague A's internal investigation interview on 18 June 2013. In that interview, Colleague A states "she was like, very rude, and like shouting at me" [sic]. However, the question of raised voices and aggression was not referred to in Colleague A's statement to the NMC, even though she discussed the incident there. Colleague A also completed a Datix (Incident Form) about this issue, but again did not mention raised voices or aggression in that report.

Ms 3, who was present at the time, discussed the incident in her internal investigation interview, dated 23 May 2013. She did not mention raised voices there, nor did she mention them in her NMC statement.

The panel bore in mind that it had found Colleague A to be a credible witness. However, the panel recognised that Colleague A had had a number of altercations with you and, given the lack of evidence from any other source, the panel could not conclude, on the balance of probabilities, that you raised your voice to, or were aggressive towards,

Colleague A on this occasion. Therefore, the panel found charges 3.3.1 and 3.3.2 not proved.

Sub-Charge 3.3.3:

3.3.3 said to Colleague A "in that case you will give the drugs" or words to that effect, when you knew that it was your responsibility to administer the insulin;

This sub-charge is found proved.

In reaching this decision, the panel took into account the fact that you accept saying the words "in that case you give the drugs" – an account which is supported by the evidence of Colleague A. The panel further considered the evidence in your internal investigation interview, where you accepted that it was your responsibility to administer the relevant insulin. The panel considered your later evidence that it was not your responsibility as you arrived late on that shift. However, given the evidence from other sources including Ms 3 and the fact that your account has changed over time, the panel concluded that you did know it was your responsibility to administer the insulin.

The panel noted that it had found sub-charges 3.3.1 and 3.3.2 not proved, in part as there was no mention of these incidents in Colleague A's statement to the NMC. It noted that there was a similar position in relation to sub-charge 3.3.3, but considered the material difference that you have admitted, in your oral evidence, to saying the relevant words laid out in the charge. The panel came to a different conclusion to those it had found in sub-charges 3.3.1 and 3.3.3, and found this sub-charge to be proved, on the balance of probabilities.

Sub-Charge 3.3.4:

3.3.4 behaved as described above, in front of a patient;

This sub-charge is found proved, in relation to sub-charge 3.3.3 only.

The panel first determined that, as sub-charges 3.3.1, 3.3.2, and 3.3.3 all relate to the same incident, the word “above” in sub-charge 3.3.4 ensures that charge 3.3.4 applies to those three preceding sub-charges.

The panel considered Colleague A’s internal investigation interview, where she stated that she “knocked and went inside, I told the patient “morning and I am sorry I have to disturb”. It also took into account the evidence of Colleague A that “it became clear that the Registrant had the drug chart, despite attending a different patient.”

The panel also noted that your explanation as to why you did not report the incident was that you were dealing with a patient. Taking all of the above into account, the panel concluded that it was more likely than not that the incident occurred in front of a patient.

The panel reminded itself that it had found sub-charges 3.3.1 and 3.3.2 not to be proved. It therefore considered this sub-charge to be proved, on the balance of probabilities, in relation to sub-charge 3.3.3 only.

Sub-Charge 3.4:

3.4 *having been asked by Colleague A to administer the insulin immediately, did not administer it for approximately another 40 minutes.*

This sub-charge is found proved.

In reaching this decision, the panel took into account that in your oral evidence you accepted that you administered the insulin approximately forty minutes after Colleague A asked you to do so.

The panel considered Ms Pitters' submission that you accept that you were told to administer the insulin by Colleague A, but did not administer the medication for forty minutes as you were concerned for patient safety. The panel recognised that, at this stage, it is concerned only with the facts of the case; it determined that, factually, the charge was found proved, on the balance of probabilities.

Charge 4:

4 your conduct in 3.5 above was dishonest in that:

Sub-Charge 4.1:

4.1 *you knew that you had not administered insulin to the patient at the correct time;*

Sub-Charge 4.2:

4.2 *intended to create the impression that you had administered the insulin at the correct time;*

Charge 4 is found not proved.

The panel considered that, due to their inextricably linked nature, these two sub-charges ought to be considered together, under the overall heading of charge 4.

The panel considered your evidence that you accepted that you knew that you had not administered insulin to the patient at the correct time.

The panel also took into account the evidence that it had heard that the nurse-in-charge, Ms 3, and Colleague A were both fully aware of the circumstances of the incident. The panel considered that you would therefore have known that any attempt to cover up the late administration of insulin would fail.

The panel had sight of the documentary evidence relevant to this charge; it considered that the "Prescription, Administration & Monitoring Record for Insulin" does not require a

time to be noted for when insulin was given. The panel also considered the patient records made on the relevant date, and determined that the notes which you made in the patient records are not conclusive evidence of a dishonest act. On one interpretation, they suggest that insulin was given after the 10:00 blood test reading; taken from another view, it is clear you have recorded in the relevant notes that "the patient was "given all meds as plan" [sic].

Taking into account the fact that other members of staff on shift knew of the relevant circumstances in relation to the patient's insulin requirements, and the inconclusive nature of the written records, the panel was not satisfied, on the balance of probabilities, that your actions in charge 3.5 were intended to create the impression that you had administered the insulin at the correct time. The panel were therefore not satisfied that you were dishonest.

Charge 5:

5 On 9 April 2013, as the bleep holder for the falls sensor mats, you:

Sub-Charge 5.1:

5.1 *failed to respond to a falls sensor mat bleeper and/or silenced the bleeper when it sounded without ensuring that it was responded to;*

This sub-charge is found proved, in that you failed to respond to a falls sensor mat bleeper <u>and</u> silenced the bleeper when it sounded without ensuring that it was responded to.

In reaching this decision, the panel first took into account the evidence of Colleague B that "[if] the beeper sounded it would be expected that the nurse with responsibility of the beeper would attend the patient immediately." It also took into account the evidence of Ms 3 that "the bleeper was with the Registrant for a period of time who was then in

charge of attending patients if the bleeper sounded". The panel considered the evidence that you had the bleeper at the relevant time. The panel was satisfied that, as the bleep holder, you had a duty to respond, were the bleeper to alarm.

The panel considered that, if you were engaged with checking the controlled drugs to the extent that you were not able to appropriately respond to the bleeper, you should have handed the bleeper over as a matter of delegation, or stopped your controlled drugs check to ensure that a member of staff attended to the source of the bleeper – as set forward as normal procedure in Colleague B's internal investigation interview.

The panel next considered the evidence of Colleague B that "the Registrant's bleeper for the sensor mat kept sounding. The Registrant kept silencing the bleeper" and that you "told [Colleague B] that the bleeper was faulty and that it was not working." The panel noted that this account is consistent with the one put forward in Colleague B's internal investigation interview.

The panel took into consideration your initial account that you accept that you did silence the bleeper, but only because it was faulty. The panel considered that this version of events contrasted with that put forward in your oral evidence, where you stated that the bleeper was working, albeit with a low battery, but that you did not attend to the patient as you could see that people were running to the patient. The panel also had sight of the evidence of Colleague B that, at the relevant time, you were doing the controlled drugs check with the door shut; your evidence was that the door was open and you could see people going to the patient in response to the bleeper. It also took into account the evidence of Ms 3 that she found the patient walking in the corridor, and that she was not responding to the bleeper when this occurred. The panel further considered the evidence of Ms 3 that she had subsequently taken the bleeper from you (along with the relevant mat), tested them, and found them both to be working correctly.

The panel concluded that your various accounts of events cannot truthfully co-exist, as they are in opposition to each other; they cannot all be true. The panel preferred the

account of Colleague B on this issue, finding the inconsistencies between your accounts to make your evidence unreliable.

The panel was therefore satisfied that, on the balance of probabilities, you failed to respond to a falls sensor mat bleeper and silenced the bleeper when it sounded without ensuring that it was responded to; the sub-charge was therefore found proved.

Sub-Charge 5.2:

5.2 *failed to report or escalate that the sensor mat and/or bleeper were not working correctly.*

This is charged in the alternative to sub-charge 5.1. The panel has found sub-charge 5.1 proved, and therefore makes no finding in respect of sub-charge 5.2.

Sub-Charge 5.3:

5.3 *thereafter provided misleading and/or dishonest explanations for your failure at charge 5.1 in that you stated that the bleeper was broken when you knew this was not true;*

This sub-charge is found proved, in that you provided misleading and dishonest explanations for your failure in charge 5.1 in that you stated that the bleeper was broken when you knew this was not true.

The panel considered the evidence of Colleague B that "the Registrant's bleeper for the sensor mat kept sounding. The Registrant kept silencing the bleeper" and that you "told [Colleague B] that the bleeper was faulty and that it was not working." The panel noted that this account is consistent with the one put forward in Colleague B's internal investigation interview.

The panel took into account your initial account that you accept that you did silence the bleeper, but only because it was faulty. It also noted your account given to the Trust on 5 July 2013 “if the pager had bleeped I would have put my head out of the door and given it to a member of staff that was floating and asked them to check it”. The panel reminded itself that these versions of events contrasted with that put forward in your oral evidence, where you stated that the bleeper was working, but that you did not attend to the patient as you could see that people were running to the patient.

The panel considered the evidence of Ms 3 that she had, after this incident, taken the bleeper from you (along with the relevant mat), tested them, and found them both to be working correctly.

The panel preferred the evidence of Colleague B and Ms 3 over yours on this issue. It determined that your lack of a consistent and coherent account of events indicated a misleading and dishonest attempt to cover up your failure to appropriately respond to the bleeper. It therefore found this charge to be proved, on the balance of probabilities.

Charge 6:

6 On 10 April 2013, behaved inappropriately towards Colleague A, a doctor, in that you:

Sub-Charge 6.1:

6.1 *threw an envelope containing papers at colleague A, hitting the colleague’s face;*

This sub-charge is found proved.

The panel first took into account the Datix (Incident Form) filled out contemporaneously by Colleague A, and Colleague A’s internal investigation interview; in these accounts, Colleague A states that you “threw the discharge letter of a patient who just

arrived…towards me" and that you "threw the documents discharge letter from L & D [Luton and Dunstable Hospital] towards me" respectively; furthermore, in her written statement, Colleague A stated that you "walked into the office and throws an envelope towards me, containing a discharge letter, which hit my face and landed on my desk". The panel acknowledged that this account was confirmed by Colleague A in her oral evidence, where she described the papers hitting her face.

The panel considered the evidence of Colleague B, who, although not a direct witness to the alleged throwing of the document, stated that you "came to me during the shift of 10 April 2013 and told me that [you] had thrown the papers at the doctor", and that you "seemed to be proud of what [you] had done and said that [you] had done it because the doctor was lazy".

The panel also considered your accounts of events, where you variously described placing, dropping, or throwing the papers onto the table in front of Colleague A. You denied throwing and hitting Colleague A in the face with the papers.

The panel reminded itself of its finding that Colleague A was a consistent and credible witness, and accepted that the Datix form has a box with limited space in which to write relevant information. The panel accepted Colleague A's evidence that there was insufficient space in which to provide a full account of the incident.

The panel preferred the evidence of Colleague A, supported by the evidence of Colleague B, to your account on this issue. The panel therefore found this charge to be proved, on the balance of probabilities.

Sub-Charge 6.2:

6.2 *having acted as described in 6.1, proceeded to tell Colleague A "here, write the drug chart" or words to that effect in an inappropriate manner;*

This sub-charge is found proved.

In reaching this decision, the panel reminded itself first that it had found sub-charge 6.1 to be proved. It considered the evidence of Colleague A that, having thrown the papers at her, you "then said 'Write the drug chart' or words to that effect and walked out quickly." The panel noted that this account was consistent with Colleague A's internal investigation interview, where she stated that you "came right 'here write the drug chart' and threw it and just left".

The panel reminded itself of the evidence of Colleague B, who, although not a direct witness to the alleged throwing of the document, stated that you "came to me during the shift of 10 April 2013 and told me that [you] had thrown the papers at the doctor", and that you "seemed to be proud of what [you] had done and said that [you] had done it because the doctor was lazy". The panel considered that this account was corroborated by Colleague B's internal investigation interview, where she stated that you said "'no I have just told the doctor that she should stop being lazy and get on' and just threw the notes at her face."

The panel was therefore satisfied, on the balance of probabilities, that you told Colleague A "here, write the drug chart" or words to that effect. It turned its attention as to whether this was done in an inappropriate manner.

The panel considered that, in the context of having thrown the papers (which hit Colleague A in the face), saying "here write the drug chart" without any apology or explanation would have been inappropriate. The panel further considered that telling Colleague A to "stop being lazy and get on" would also have been unprofessional and inappropriate. Furthermore the panel considered that your account of events (namely, that you dropped the papers, spoke very briefly to Colleague A, and left) would also have been inappropriate and unprofessional; interactions between medical professionals should be respectful, and there ought to have been a professional discussion before reaching a conclusion. The panel reminded itself that Colleague A

was “upset and shocked” by the incident. It further reminded itself that Colleague B was given a very similar task to you, and addressed the matter quite differently.

The panel therefore concluded that the charge was proved, on the balance of probabilities.

Sub-Charge 6.3:

6.3 *reported your actions as described in 6.1 to Colleague B and laughed about it;*

This sub-charge is found proved.

The panel first considered itself of the evidence of Colleague B who stated that you “came to me during the shift of 10 April 2013 and told me that [you] had thrown the papers at the doctor”, and that you “seemed to be proud of what [you] had done and said that [you] had done it because the doctor was lazy”. The panel accepted this account, and was satisfied, on the balance of probabilities, that you reported your actions as described in sub-charge 6.1 to Colleague B.

The panel noted that there is no mention in Colleague B’s statement of you laughing – only that you “seemed to be proud of what [you] had done”. However, it reminded itself of Colleague B’s oral evidence (when directed to the relevant statement and in response to the question “What made you say that?”) that you seemed proud “because she was laughing about it”.

The panel also took into account Colleague A’s Datix report that Colleague B informed her that you had told her that “she threw the discharge letter on me and laughed”. The panel acknowledged that this evidence was hearsay, and so carried less weight than oral evidence; nevertheless, the panel recognised that it was written close to the time of the incident and corroborated other evidence.

Taking the above into account, the panel was satisfied that, on the balance of probabilities, you did laugh when reporting your actions to Colleague B; it therefore found the charge to be proved.

Charge 7:

7 Over the course of your employment with the Trust were aggressive and/or combative and/or generally failed to work collaboratively with colleagues on one or more of the following occasions, but not limited to

The panel first acknowledged that Ms Pitters, on your behalf, initially objected to the wording of the stem of charge 7 at the start of this hearing; the panel was subsequently informed that Mr Zeitlin and Ms Pitters had agreed that the stem would relate solely to matters referred to within Ms 5's internal investigation on 12 June 2013 at pages 118 – 122 of the Hearing Exhibit Bundle. The panel acknowledged this agreement.

In relation only to the stem of Charge 7, the panel gave careful consideration to Ms Pitters' submission that you have a strong personality and were merely being assertive. However, it had sight of the evidence of Ms 5, your team leader and line manager at the time, who stated:

> *I had concerns for the Registrant's attitude regarding other team members and tried to help her with this attitude. The Registrant was not a team player. In addition, I had reports that the Registrant had difficulties interacting with other nurses because she was rude and challenging and went against nurses and doctors rather than working with them. The Registrant behaved in an unprofessional way regardless of who was in the vicinity; patients, relatives and senior individuals and had frequent verbal conflicts with members of staff.* [sic]
>
> *…*

The Registrant also had a poor attitude with people in authority; she struggled to take directions from others and always wanted to complete tasks her way. There was a big problem between the Registrant and [Colleague A] *who the Registrant continually disrespected. The Registrant contradicted information that the doctor said in front of patients and this may have often antagonised patients with her attitude towards the doctor.*

The Registrant had a full disregard to the ward processes and often altered the processes without notifying anyone what she was doing. The Registrant also often shouted and there was one reported instance where she swore on the ward.

The panel also accepted the evidence that you were provided with considerable support by Ms 5 in particular and by the Trust, including [PIRVATE].

Having heard Ms 5's oral evidence, the panel was satisfied that she had made significant efforts over a two year period to support you in your first major role as a nurse. It was clear to the panel that Ms 5's approach was to deal with various issues which arose through the Trust's informal management disciplinary process, while also keeping her manager broadly abreast of events; it noted that formal action was eventually taken in March 2013.

The panel determined that there was evidence before it of behaviour which could be characterised as aggressive or combative, and of you working in a non-collaborative fashion. The panel concluded, from the evidence before it, that Ms 5 had dealt with this behaviour on a number of occasions.

The panel concluded that the stem of charge 7 was proved, on the balance of probabilities.

Sub-Charge 7.1:

7.1 *a date in or around February 2013 and in relation to Colleague B and the care of Patient 3.*

This sub-charge is found proved.

Turning its attention specifically to sub-charge 7.1, the panel took into account Colleague B's evidence that you "abused [accused] me of neglecting her patient and became very verbally aggressive toward me" and that you were "abrupt towards me, snapped at me and [were] aggressive." The panel noted Colleague B's evidence that you "did later apologise for [your] behaviour." The panel considered that this account was consistent with Colleague B's internal investigation interview where she stated that you were "very abrupt with me, she was accusing me of something which she was the one at fault. But anyway she did apologise eventually so" [sic].

The panel reminded itself of your oral evidence in relation to this matter, where you told the panel that, while you had some memory of the incident in question, your view was that Colleague B had been at fault, and that you were frustrated at the time and told her so.

The panel reminded itself of its finding that Colleague B was credible, reliable and consistent witness; it preferred her account of events to yours on this issue. The panel therefore found sub-charge 7.1 to be proved, on the balance of probabilities.

Determination on Interim Order

On 19 March 2019, after the handing down of its determination on facts, it was clear that this hearing would go part-heard, as there were no more days scheduled for this hearing to take place. The panel, in agreement with the parties, determined that the hearing should be scheduled to resume on 23 July 2019, for four days.

The panel therefore invited both parties to make representations as to the necessity of an interim order.

The panel considered the submissions made by Mr Zeitlin that an interim order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest. The panel took account of the submissions made by Ms Pitters on your behalf, opposing the imposition of an interim order. Ms Pitters also submitted three up-to-date testimonials on your behalf; one gave strong personal support, and the others related to your work as a registered nurse from July 2015 until July 2018. These stated that you were “a caring and competent nurse who completed her nursing duties diligently”.

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

The panel initially noted that it must be necessary, not merely desirable, for it to impose an interim order.

The panel had regard to the seriousness of the facts found proved in reaching the decision to impose an interim order. The panel considered that the risks to patients, in relation to charges 1, 3, and 5, were potentially serious. The panel had regard to the testimonials before it; however, the panel was not satisfied that, in stressful circumstances, you would not react aggressively or might act so as to put patients at a risk of harm; the panel therefore determined that there was a real risk of repetition. The panel concluded that an interim order was necessary for the protection of the public.

The panel considered the wider public interest; whilst it recognised that the bar was set high for it to impose an interim order on public interest grounds alone, in the circumstances of this case when linked with the risk to the public, the panel considered that an interim order was necessary on public interest grounds, in relation to the findings on dishonesty.

The panel first considered imposing an interim conditions of practice order but determined that such an order would not address the issue of public protection, nor the public interest concerns raised by the charges relating to dishonesty found proved. The panel considered whether conditions relating to close supervision and mentoring could be sufficient, but concluded that it would not; the extent of close supervision required to negate any risk to the public would be impracticable. The panel also noted that you had previously had support and supervision from Ms 5 for a period of two years, but this had not prevented regulatory concerns from arising. The panel therefore could not conceive of workable, practicable, or appropriate conditions of practice in the circumstances of the case at this stage.

The panel was therefore satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. Such an order will sufficiently protect the public and address the wider public interest concerns in relation to your dishonest conduct.

The period of this order is for 6 months to cover the period of time before this hearing next resumes, and to allow for the possibility of an appeal to be made and determined.

This hearing will resume on 23 July 2019, as agreed between all the parties and the panel.

Resumption of Hearing

On the first day of the resumed hearing on 23 July 2019, the panel heard oral evidence from you in relation to misconduct and impairment. It also received written final submissions from Ms Mustard on behalf of the NMC in this regards. At this stage the panel was informed by Ms Pitters that she was professionally embarrassed and was therefore obliged to withdraw as your legal representative. You told the panel that you had withdrawn your instructions from Ms Pitters. You asked the panel to adjourn the hearing until the following day, so that you could speak with the RCN in relation to further representation. You also told the panel that it was your wish to conclude the hearing as soon as possible.

Ms Mustard, on behalf of the NMC, did not oppose the application to adjourn the hearing until tomorrow.

The panel decided to adjourn the hearing until tomorrow and encouraged you to contact the RCN without delay, and to attend the hearing tomorrow, when the position will be assessed in light of the information to be presented to the panel.

Application to Adjourn

On the second day of the hearing, the panel heard an application by Ms Dmitriev (instructed by the RCN) on your behalf, to adjourn the hearing until the beginning of September 2019. She informed the panel that the RCN were not currently in a position to obtain a regulatory barrister in the month of August given the short notice. Ms Dmitriev reminded the panel that you find yourself without a representative in a high stakes situation, which could place you at potential disadvantage. Ms Dmitriev submitted that whilst you have good knowledge of your case, you are not an experienced advocate and therefore it would be in your interests and the interests of justice to adjourn at this time.

Ms Mustard submitted that the NMC's position is neutral with regards to the application. She recognised that you have been represented throughout these proceedings and submitted that should you wish to continue being represented, it was right for you to secure that representation.

The panel heard and accepted the advice of the legal assessor. He referred to Rule 32 of the Rules referencing:

a) The public interest in the expeditious disposal of the case;
b) The potential inconvenience caused to a party…; and
c) Fairness to the registrant.

The legal assessor advised that a registrant was entitled to be represented in proceedings which had the potential to affect her right to practise.

The panel considered that given the circumstances, it was important for you to be able to secure legal representation. It decided to allow the application out of fairness to you noting that you have continued to engage and attend these proceedings, and that you have at all times until yesterday, been represented by counsel.

In reaching its decision, the panel considered the interests of the public in the expeditious disposal of this case, the inconvenience that would be caused to the NMC and the fairness to you. However, it determined that your interests in having legal representation and overall fairness outweigh the public interest in these circumstances.

The panel therefore allowed the application to adjourn this hearing until a later date which is to be confirmed.

Submission on misconduct and impairment:

Having announced its finding on all the facts, 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 heard oral evidence from you under oath. You referred the panel to your reflective account and training certificates. You told the panel that in April 2019, you worked part-time within a Mental Health Transfer team, escorting patients from their houses to secure units. You informed the panel that you were required to complete a Control and Restraint course, in which you completed role play and learnt how to deal with conflict appropriately. You stated that the training allowed you to reflect on the way in which you react to certain situations and the way in which you may be perceived by individuals. You accepted that it may be necessary for you to complete a further, more in depth training course in relation to conflict resolution.

You acknowledged that you have a 'strong personality' and that this can be perceived negatively in certain situations. You informed the panel that now know that you need to change your approach to people, 'sit back' and 'think about the other person's personality'. When reflecting back to 2013, you accepted that you did not act entirely professional at times. You asked the panel to note that you were a recently qualified registered nurse at that time. However, you reiterated that prior to the incidents contained within the charges, you had never been subjected to any disciplinary proceedings. You stated that it was only after you 'whistle blew' did these allegations arise.

[PRIVATE]

In her written submission, Ms Mustard invited the panel to take the view that your actions amount to a breach of *The Code: Standards of conduct, performance and ethics for nurses and midwives 2008* ("the Code"). She then directed the panel to specific paragraphs and identified where, in the NMC's view, your actions amounted to misconduct.

Ms Mustard referred the panel to the case of *Roylance v GMC (No. 2) [2000] 1 AC 311* which defines misconduct as a 'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances.'

Ms Mustard submitted that the concerns in your case relate to a number of areas. She invited the panel to find that the minimum expectation expected from a nurse is to treat their patients with care and compassion, and to communicate efficiently with other professionals, patients and their family members. Ms Mustard submitted that your failure to keep accurate records and failure to administer insulin at the correct time, fell well below the standard expected of a registered nurse. Further, Ms Mustard invited the panel to find that the dishonesty is your case is particularly serious as it is wide ranging and involves providing misleading information in order to attempt to cover up your care failings. She submitted that this type of dishonesty has the potential to put patients at a risk of harm. Ms Mustard invited the panel to find that your failings, considered both individually and collectively, represent a sufficiently serious departure from proper standards as to result in a finding of misconduct.

She then moved on to the issue of impairment, and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. Ms Mustard referred the panel to the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927 (Admin) 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.

Mrs Justice Cox went on to say in Paragraph 76:

> I would also add the following observations in this case having heard submissions, principally from Ms McDonald, as to the helpful and comprehensive approach to determining this issue formulated by Dame Janet Smith in her Fifth Report from Shipman, referred to above. At paragraph 25.67 she identified the following as an appropriate test for panels considering impairment of a doctor's fitness to practise, but in my view the test would be equally applicable to other practitioners governed by different regulatory schemes.
>
> > 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.

Ms Mustard submitted that your misconduct placed patients at an unwarranted risk of harm and that the wide ranging nature of your failings are sufficiently serious to bring the nursing profession into disrepute. Further, Ms Mustard submitted that your failings in basic nursing care and dishonesty have breached fundamental tenets of the profession.

In relation to insight, Ms Mustard submitted that you have failed to take accountability for your actions, including your dishonesty, and that you continue to blame your colleagues, suggesting that there is some form of 'conspiracy' against you. Ms Mustard suggested that the concerns in your case are deep seated and that despite support provided to you, concerns continued to arise. Ms Mustard submitted that true remediation has not taken place and therefore there remains a risk of future repetition which would place patients at a risk of harm. She invited the panel to find that your actions are so serious that a finding of current impairment is required in order to maintain the public confidence in the profession and to uphold the proper professional standards.

Mr Buxton, on your behalf, acknowledged the panel's findings in relation to dishonesty. He accepted that the public must trust and have confidence in the nursing profession. However, he asked the panel to bear in mind that there are different levels of dishonesty. Mr Buxton submitted that the dishonesty found proved in your case falls far short of other types of dishonesty.

Mr Buxton submitted that misconduct and impairment should be considered in the context of the background and particular circumstances of this case.

In relation to charge one, Mr Buxton submitted that whilst it can be said that your conduct placed a patient at a risk of harm, no actual harm was caused. He stated that this charge amounts to you having ‘a clumsy way of dealing’ with a patient, while having the patient’s best interests at heart.

When addressing the panel in relation to charge three, Mr Buxton accepted that your conduct in this charge may be considered as ‘disrespectful’ but that this matter could have been dealt with at a local level rather than within regulatory proceedings. He reminded the panel that, at no stage, had you received any formal warning for conduct of this kind.

In relation to charge five, Mr Buxton stressed the fact that you were on a protected drug round at the time of the incident. Whilst he accepted that it was a matter for the panel as to whether this charge amounts to misconduct, Mr Buxton asked the panel to bear in mind the background to this charge.

In relation to charges six and seven, Mr Buxton submitted that it is a matter for the panel as to whether the charges amount to misconduct.

When addressing the panel in relation to impairment, Mr Buxton reminded the panel that these proceedings are not intended to punish registrants but to protect the public. He urged the panel to exercise caution when determining impairment. Mr Buxton accepted that you remain forthright and adamant in respect of certain features of this case, but ask the panel to consider the reflective statements, testimonials and training certificates before it.

Mr Buxton submitted that it would be wrong for the panel to determine that you have not set your mind to looking to the future. He noted that you continue to deny certain aspects of the case but submitted that denial does not prevent a registered nurse from being able to demonstrate insight. Mr Buxton stated that you have an understanding of the need to minimise the risk of similar events occurring in the future and further, the

steps which must be taken to do so. He submitted that there has been a strong element of self-assessment and that whilst you have completed some additional training, you recognise that there are still more which may need to be undertaken. Mr Buxton stated that you now understand that you must treat people with respect and compassion and that this approach minimises the likelihood of your past behaviour being repeated. Mr Buxton submitted that you have demonstrated developing insight into your behaviour, which arose in 'unique circumstances' and have an otherwise positive professional record.

The panel has accepted the advice of the legal assessor.

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

Decision on misconduct

When determining whether the facts found proved amount to misconduct the panel had regard to the terms of *The code: Standards of conduct, performance and ethics for nurses and midwives 2008* (the Code)

The panel, in reaching its decision, had regard to the public interest and accepted that there was no burden or standard of proof at this stage and exercised its own professional judgement.

The panel recognised that there are a number of different aspects to this case and therefore the panel considered each charge separately to determine whether, in the panel's view, it amounted to misconduct.

When determining whether charge one amounted to misconduct, the panel considered that a patient's emotional needs are of the upmost importance. The panel accepted that at times, a nurse may be required to 'rush' some elements of care. However, it determined that at the point at which Patient 1 raised a concern, a change in your behaviour should have been triggered in order to assist Patient 1 appropriately. The panel found that there is a minimum expectation for a nurse to treat their patients with care and compassion and determined that your failure to recognise Patient 1's emotional needs is sufficiently serious to amount to misconduct.

When considering whether charge two amounts to misconduct, the panel acknowledged that there are varying degrees of dishonesty. It determined that honesty and integrity is a fundamental element of your professional duty as a registered nurse. 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. In light of the panel's findings that you did act dishonestly, the panel determined that this charge was a sufficiently serious departure from proper standards as to amount to misconduct.

In relation to charge three, the panel noted that incorrectly administering insulin can, potentially, be fatal to a patient. The health and wellbeing of Patient 2 was your responsibility and should have been your priority. It was your responsibility to communicate appropriately and effectively with a fellow professional in relation to the care which should be provided to Patient 2. However, the panel found that you failed to do so and further, that you did not immediately attend to Patient 2, delaying the care for 40 minutes. In light of this, the panel determined that your conduct in relation to charge 3.1, 3.2 and 3.3.3 fell below the standard expected of a registered nurse and were sufficiently serious to amount to misconduct.

When determining whether sub charge 3.3.4 amounted to misconduct, the panel reminded itself that it did not find the facts found proved at charges 3.3.1 and 3.3.2. The panel noted that it was not satisfied that in your discussion with Colleague A, which was

held in front of Patient 2, you had raised your voice or acted aggressively. In light of this, the panel determined that charge 3.3.4 was not sufficiently serious to amount to misconduct.

In relation to charge 3.5, the panel recognised the seriousness of the context of this sub charge and noted your detailed reflection in which you state:

"…however, my documentation of the event was far from detailed and actually failed to highlight the late insulin and observations he had been under."

You further state:

"I 100% understand that the consequences of my failure to document appropriately could have been detrimental to the patient. If for example I had had to go home early and someone ekes [sic] taken over my shift may have not been aware that we had been monitoring the patient due to a delayed insulin dose. This could have had serious repercussions for both the patient and other staff members who administer later insulin. Luckily this never happened but I totally appreciate it was a possibility."

When considering the limited wording of charge 3.5, the panel recognised that mistakes can be made. It also noted that the medical record form appeared to require only a signature and not a time of administration. It bore in mind its findings at charge four, specifically that it could not be satisfied that your conduct at charge 3.5 was dishonest. It therefore determined that this charge, when considered in isolation, was not sufficiently serious as to amount to misconduct.

When considering charge five, the panel determined that it was your responsibility to respond to the bleep directly or to ensure that the bleep was responded to by another member of staff. You failed to do so and instead, decided to silence the bleeper. The panel determined that your failure to respond appropriately and your misleading and dishonest explanation for doing so, could have resulted in actual patient harm. In light of

this, the panel determined that your conduct contained within charge five was a sufficiently serious departure from proper standards as to result in a finding of misconduct.

In relation to charge six, the panel noted that nurses are required to communicate with other professionals, patients and family members as part of their role. It is your responsibility to work collaboratively as part of a multi-disciplinary team. Your failure to do so, and your action in throwing an envelope containing papers at another colleague, hitting her in the face, falls far below the standards expected of a registered nurse. In light of this, the panel determined that your conduct contained within charge six is serious enough to amount to misconduct.

When determining whether charge seven amounts to misconduct, the panel noted its findings of facts in this regard. The panel was satisfied that you failed to work cooperatively within teams and further, that you failed to respect the skills, expertise and contributions of your colleagues. The panel determined that this type of behaviour was a sufficiently serious departure from proper standards as to result in a finding of misconduct.

Further, the panel was of the view that your actions amounted to a breach of the Code. Specifically:

The people in your care must be able to trust you with their health and wellbeing

To justify that trust, you must:
• make the care of people your first concern, treating them as individuals and respecting their dignity
• work with others to protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community
• provide a high standard of practice and care at all times
• be open and honest, act with integrity and uphold the reputation of your profession.

As a professional, you are personally accountable for actions and omissions in your practice, and must always be able to justify your decisions.

Treat people as individuals

1 You must treat people as individuals and respect their dignity.

3 You must treat people kindly and considerately.

Collaborate with those in your care

8 You must listen to the people in your care and respond to their concerns and preferences.

Ensure you gain consent

14 You must respect and support people's rights to accept or decline treatment and care.

Work effectively as part of a team

24 You must work cooperatively within teams and respect the skills, expertise and contributions of your colleagues.

26 You must consult and take advice from colleagues when appropriate.

Keep clear and accurate records

42 You must keep clear and accurate records of the discussions you have, the assessments you make, the treatment and medicines you give, and how effective these have been.

Uphold the reputation of your profession

61 You must uphold the reputation of your profession at all times.

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, taking into account the breaches of the Code and its findings

in relation to the charges, the panel found that your actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision on impairment

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

Nurses occupy a position of privilege and trust in society and are expected at all times to be professional. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the judgement of Mrs Justice Cox in the case of *Council for Healthcare Regulatory Excellence* v *(1) Nursing and Midwifery Council (2) Grant* [2011] EWHC 927

The panel accepted Ms Mustard's submissions that all four limbs of the test contained with *Grant* are engaged in your case. The panel determined that your failings have, in the past, placed patients at an unwarranted risk of harm. It found that your wide ranging failures have have brought the nursing profession into disrepute and breached a fundamental tenet of the nursing profession. Further, the panel determined that you have, in the past acted dishonestly.

In relation to your insight, the panel considered your reflective account. The panel noted that you demonstrate some insight into the clinical matters found proved, your professional responsibilities and your relationships with colleagues. Specifically:

"I do appreciate that I should have acted more professionally, despite whatever she was saying, and would certainly now deal with it differently by remaining professional and courteous at the time, I would at this stage in my career in this situation handle it very

differently, looking at the whole picture, not just mine. Try and see it from the other persons prospective [sic] before judging or jumping to conclusions."
Further, in relation to charge three (the insulin incident), you state:

"Instead of telling the doctor just to give it herself, which made the conflict worse I could have approached the subject more professionally and explained my concerns better and clearer as she had not seemed to heed those concerns. I could and should have raised my professional code of practise to the doctor, explained that my NMC code states that I should not give medication unsafely or do anything that could have caused harm."

While the panel accept that this is evidence of your developing insight, the panel note that both in your reflective account and during your live evidence at the misconduct and impairment stage, you again told the panel that the allegations against you were false and that, apart from the admission that you had made, the case against you had been made by colleagues who had been the subject of your whistleblowing.

Although the panel had already considered this and questioned witnesses on it, the panel recognised the need to take into account all of the background and particular circumstances of this case and so reminded itself of the actions taken and its earlier conclusion.

At the facts stage the panel had considered the question of a malicious, retaliatory action against you by colleagues. A number of witnesses were asked specifically about this. For example Colleague B said in evidence that she "worked well with anyone" although she went on to state that she would not choose to work with you after the way that you had treated her.

You also re-iterated your claims that the Trust had not pursued your whistleblowing allegations. The panel reminded itself of the evidence of Ms 8. She explained to the panel that, at the internal disciplinary hearing on 29 September 2014, "it was

established that the Registrant had not raised her concerns to the Chief Executive as the Registrant had claimed she had done."

Ms 8 told the panel that it was agreed to adjourn the internal hearing to allow you to make your whistleblowing allegations to the relevant Executive Director and that it was agreed that the Trust would investigate your allegations separately. Ms 8 went on to explain the process at the internal hearing "What we did was, we separated the evidence from the people who she believed had something against her, and just used the evidence from people who she had not highlighted".

Ms 6 also gave evidence in relation to the whistleblowing allegations and told the panel that "These concerns were looked into but could not be substantiated. The staffing levels were reviewed and it was confirmed that the staffing levels were always above the expected level."

As is clear from the panel's earlier decision on the facts, it was satisfied that the charges against you were not part of a malicious campaign against you.

You also again raised the fact that there had never been any disciplinary action against you prior to your whistleblowing, saying that disciplinary action was solely as a result of your whistleblowing. Again, whilst not specifically relevant at the misconduct stage, the panel reminded itself that it had considered this earlier. There had been substantial written and oral evidence from your line manager Ms 5 setting out the numerous concerns she had about your conduct and the way in which she was managing and escalating concerns through the Trust’s established HR capability procedure which, she explained, included informal and formal processes. She told the panel that "I spoke to the HR team very early on…and I also discussed issues at supervision with my manager…There's an informal section to it, and that was followed in advance of the most serious concerns being raised."

The panel was satisfied that Ms 5 had provided considerable support to you during your

employment and had worked through the HR capability process, escalating to the formal part of the process only as a result of your "failure to progress, to learn and to develop."

Having reminded itself of its earlier conclusions, the panel remained satisfied that moving you from the informal to the formal part of the Trust's capability procedure was not as a result of your whistleblowing allegations.

Whilst the above is not strictly relevant at the misconduct and impairment stage of the hearing, the panel considered it important to address the issues raised by you in your evidence at this stage.

The panel went onto consider whether your misconduct is remediable. It noted that some of your actions are clearly remediable however, it considered that dishonesty is always more difficult to remediate.

When considering whether you have remediated the misconduct found proved, the panel noted your evidence that after leaving the Trust, you secured employment at Lakeside Care Home. The panel had before it a reference from the Director of Lakeside Care Home, in which he states:

“Marie was a caring and competent nurse who completed her nursing duties diligently whilst employed here.”

The panel also had before it a character reference from a Consultant Otolaryngologist, who states:

“Marie has shown great personal motivation, commitment, and application in pursuing her chosen career in nursing. As a mature student, she was advantaged in having considerable life experience, which is reflected in her pragmatic and common sense approach to everyday situation. She is enthusiastic about her career as a health

professional, keen to utilise her newly acquired competencies and to further develop professionally. She is, in my experience, reliable, conscientious and dedicated. She communicates clearly and effective. She has a strong set of personal values, and a deep sense of duty. In a personal capacity, I can vouch for her trustworthiness and honesty."

While the panel gave full weight to the testimonials before it, it noted your evidence that whilst employed at Lakeside Care Home, you worked predominantly night shifts in a team with two healthcare assistants. In light of this, the panel was of the view that your ability to interact effectively and appropriately with others has not yet been fully tested in a multidisciplinary team environment.

The panel had before it training certificates provided by you. Whilst the panel acknowledged the training you had undertaken, it could not be satisfied that the training completed specifically addressed the deficiencies identified. For example, the panel had no evidence before it that you had undertaken further training in relation to working effectively within a team or administering insulin.

In relation to the dishonesty found proved, the panel noted that dishonesty is inherently difficult to remediate. Nevertheless, you continue to fail to take responsibility for your dishonesty and thus, you have not shown insight or demonstrated remediation.

In light of your limited insight, remediation and lack of accountability, the panel determined that there is a significant risk of repetition of the misconduct found proved being repeated. The panel acknowledged that a considerable period of time has passed since the matters found proved, and that in that period no further regulatory concerns have been raised regarding your practice. However the panel was of the view that this was not sufficient to amount to remediation and that positive actions, including training, would need to be evidenced to reduce the risk of repetition. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC are to protect, promote and maintain the health safety and well-being of the public and patients, and to uphold/protect the wider public interest, which includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions. In light of the seriousness of some of the charges, and the instances of dishonesty, the panel concluded that the public confidence in the profession would not be maintained if a finding of impairment on public interest grounds was not made. The panel determined that, in this case, a finding of impairment on public interest grounds was required.

Having regard to all of the above, in the panel's judgement your fitness to practise is currently impaired.

Determination on sanction:

The panel has considered this case very carefully and has decided to make a striking-off order. It directs the registrar to strike you off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. The panel accepted the advice of the legal assessor. 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 Sanctions Guidance (SG) published by the NMC. It recognised that the decision on sanction is a matter for the panel, exercising its own independent judgement.

Ms Mustard informed the panel that the NMC's sanction bid was that of a striking-off order. She provided the panel with suggested mitigating and aggravating factors in your case. Ms Mustard submitted that it would neither be proportionate nor workable to impose a condition of practice order and that such an order would not address the dishonesty found proved. She further submitted that a suspension order would not be an appropriate sanction. Ms Mustard referred the panel to the SG in this regard. She submitted that the factors within the SG, indicating that a suspension would be appropriate, were not met in your case. Ms Mustard submitted that your dishonesty should be considered serious, as it was systematic and premeditated. She invited the panel to find that only removal of your registration from the register would mark the seriousness of the matters found proved and that the appropriate order would be that of a striking-off order. She submitted that this was the only sanction that would protect the public, maintain confidence in the nursing profession and uphold proper standards of conduct and behaviour.

Mr Buxton reminded the panel that any sanction imposed in these proceedings, must be proportionate. He asked the panel to look at the overall circumstances of the case and submitted that many aspects of your case are evidently remediable. He stated that a

finding of dishonesty should not automatically result in a registrant being removed from the register. Mr Buxton's primary submission was that the panel should impose a conditions of practice order. Mr Buxton submitted that the behaviours and clinical omissions found proved in your case are remediable and that such an order would facilitate you in developing your insight and allow you to remediate the concerns found proved. He asked that you be given an opportunity to demonstrate that you are a safe practitioner. Mr Buxton stated that should you be suspended at this time, you would be precluded from being able to demonstrate meaningful insight and remediation in a nursing environment. Mr Buxton submitted that it was neither necessary nor appropriate to impose the ultimate sanction, namely a striking off order.

The panel considered the following aggravating and mitigating factors in your case:

Aggravating

- Patients were placed at an unwarranted risk of harm by way of your misconduct;
- The misconduct found proved was not an isolated incident;
- While the panel appreciates that you had been qualified as a registered nurse for only three years at the time the charges arose, some of the concerns found proved related to basic nursing skills.
- You have demonstrated limited insight into your misconduct;
- You demonstrated a lack of accountability for your failings;
- You acted dishonestly on three separate instances in order to attempt to conceal errors and/or omissions made by you ; and
- You have not remediated the concerns found proved in the six years since the incidents.

Mitigating

- You have provided the panel with three positive testimonials; and
- You were experiencing difficult personal circumstances at the time the charges arose.

Before assessing each sanction in ascending order, the panel considered the seriousness of your dishonesty and referred to the SG in this regard, taking into account the relevant case law. The panel determined that by your dishonesty you deliberately breached your professional duty of candour to cover up what went wrong. Further, your dishonesty placed vulnerable patients at direct risk of harm. While the panel consider that your dishonesty should not be regarded as premeditated or systematic, it took into account that it was repeated on a number of occasions and included being dishonest to a patient's relative and your colleagues over a significant period of time. In light of all of these factors, the panel regarded your dishonesty as serious.

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

Next, in considering whether a caution order would be appropriate in the circumstances, the panel took into account the SG, which states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that your misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case and the dishonesty identified. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on your registration would be a sufficient and appropriate response. The panel is mindful that any conditions imposed must be proportionate, measurable and workable. The panel took into account Mr Buxton's submissions that some aspects of your case are remediable and that such an order would facilitate your return to practice as a registered nurse. The panel noted that you were previously supported by the Trust in 2013 but that the support did not appear to the panel to have brought about the improvements in your practice that were required.

The panel appreciate that a considerable period of time has elapsed since the matters found proved and note Mr Buxton's submission that your 'circumstances have now changed'. However, the panel took into account that you continue to deny that you acted dishonestly, despite your regulator making findings to the contrary. In light of this, the panel could not be satisfied that there were practical or workable conditions that could be formulated, given the serious nature of the misconduct and dishonesty found proved in this case. The panel determined that such an order would not protect the public and that given the seriousness of the issues, a conditions of practice order would not address the wider public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction.

The panel had regard to the SG and whilst it was satisfied that there had been no evidence of repetition of behaviour since the incidents, the panel had concerns which indicated that the issue of a suspension order was not appropriate.

The aggravating factors that the panel took into account were that the misconduct found proved was not an isolated incident, that there was the potential for patient harm and the lack of insight into your failings. These factors led the panel to conclude that there is a significant risk of repetition. The panel recognised that you had provided two reflective accounts during this hearing. These started to address how you might deal with future professional relationships but provided little additional meaningful evidence of insight or remediation despite the lapse of six years since these incidents took place.

The panel has given full weight to the mitigation put forth on your behalf. However, it determined that your misconduct, was a significant departure from the standards expected of a registered nurse. The panel determined that your failure to take accountability for your misconduct and especially dishonesty, and your persistence in blaming others, demonstrates evidence of a harmful deep-seated attitudinal problem. In

this regard, the panel referred to your reflective statement, which was provided to the panel after announcing its findings on facts, in which you state ‘I was never in any way dishonest; I have been nothing but true full [sic] all the way along this process.’

The panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that your actions were significant departures from the standards expected of a registered nurse and fundamental concerns remain regarding your professionalism. The panel was of the view that your conduct is fundamentally incompatible with you remaining on the register and to allow you to continue practising would not protect the public, would undermine public confidence in the profession and in the NMC as a regulatory body and would not uphold proper standards of conduct and behaviour.

The panel therefore determined that a striking-off order is the only appropriate sanction in the circumstances of this case.

Determination on Interim Order

The panel next considered the submissions made by Ms Mustard that an interim order should be made in order to allow for the possibility of an appeal to be made and determined. She submitted that an interim suspension order should be made on the grounds that it is necessary for the protection of the public and is otherwise in the public interest.

Mr Buxton did not oppose the application.

The panel accepted the advice of the legal assessor.

The panel considered an interim conditions of practice order but determined that in light of the panel's earlier findings and the circumstances of case, it concluded that this would be inappropriate.

The panel was satisfied that an interim suspension order is necessary for the protection of the public and is otherwise in the public interest. The panel had regard to the seriousness of the facts found proved and the reasons set out in its decision for the substantive order in reaching the decision to impose an interim order. To do otherwise would be incompatible with its earlier findings.

The period of this order is for 18 months to allow for the possibility of an appeal to be made and determined which the panel accepts may take a substantial period of time.

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

That concludes this determination.