

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

1 – 4 October 2018, 11 – 14 March, 1 – 5 April and 3 – 4 June 2019

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

Name of registrant:	Kaye Elizabeth Pexton
NMC PIN:	91B0246E
Part(s) of the register:	Registered Nurse – Sub Part 1 RN1: Adult – 25 April 1994 SPDN Specialist practitioner: District nursing/ V100 Community practitioner nurse prescriber 26 July 2003
Area of Registered Address:	England
Type of Case:	Misconduct
Panel Members:	Julia Thompson (Chair, Registrant member) Deborah Hall (Registrant member) Darren Shenton (Lay member)
Legal Assessor:	John Caudle
Panel Secretary:	Rob James
Registrant:	In attendance via webex and not represented
Nursing and Midwifery Council:	Represented by Dejan Mladenovic (1-4 October) & Tamsin Ryder (11 – 14 March) Case Presenter
Facts proved:	1a(i), 1a(ii), 1c, 2, 3a(i), 3a(ii), 3c, 4, 5a(i), 5a(ii), 5a(iii), 5a(iv), 6, 7b(i), 7b(ii), 10, 16, 17a,
Facts proved by admission:	None
Facts not proved:	12, 13, 14, 15 (NMC offered no evidence), 1b, 3b, 7a(i), 7a(ii), 7c, 8, 9a(i), 9a(ii), 9a(iii), 11, 17b
Fitness to practise:	Impaired

Sanction: Striking off order

Interim Order: Interim suspension order (18 months)

Details of charge:

That you, a registered nurse whilst working at the Fieldhouse Surgery:

1) In relation to Patient A:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:57;
 - i) that the patient had declined a diabetic foot examination;
 - ii) that the patient was “Excepted from diabetes quality indicators: Informed dissent” and/or had chosen not to be reviewed;
- b) Did not record an entry of any telephone conversation and/or appointment with Patient A in relation to 3 March 2016;
- c) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.

2) Your conduct at any and/or all of charge 1(a) above was dishonest in that you:

- a) knew that Patient A had not declined a diabetic foot examination;
- b) knew that Patient A had not chosen or agreed to be excepted from the diabetes quality indicators and/or not to be reviewed;
- c) knew that you had not consulted with Patient A regarding the matters referred to in the record on 3 March 2016 and/or at all;
- d) knew that the entry in Patient A’s records was inaccurate and/or misleading.

3) In relation to Patient B:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:01;

- i) that there had been a “Type II diabetic dietary review”;
 - ii) that the patient had declined a diabetic foot examination;
 - b) Did not record an entry of any telephone conversation and/or appointment with Patient A in relation to 3 March 2016;
 - c) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.
- 4) Your conduct at any and/or all of charge 3(a) above was dishonest in that you:
- a) knew that you had not conducted a “Type II diabetic dietary review”;
 - b) knew that Patient B had not declined a diabetic foot examination;
 - c) knew that you had not consulted with Patient B regarding the matters referred to in the record on 3 March 2016 and/or at all;
 - d) knew that the entry in Patient B’s records was inaccurate and/or misleading.
- 5) In relation to Patient C:
- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:59;
 - i) that the patient had declined a diabetic foot examination;
 - ii) that the patient was “Excepted from diabetes quality indicators: Informed dissent” and/or had chosen not to be reviewed;
 - iii) Did not record an entry of any telephone conversation and/or appointment with Patient C in relation to 3 March 2016;
 - iv) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.
- 6) Your conduct at any and/or all of charge 5(a) above was dishonest in that you:
- a) knew that Patient C had not declined a diabetic foot examination;
 - b) knew that Patient C had not chosen or agreed to be excepted from the diabetes quality indicators and/or not to be reviewed;

- c) knew that you had not consulted with Patient C regarding the matters referred to in the record on 3 March 2016 and/or at all;
 - d) knew that the entry in Patient C's records was inaccurate and/or misleading.
- 7) In relation to Patient D on 10 March 2016:
- a) Inaccurately recorded, or caused to be recorded, the following in the patients electronic record at 12:59;
 - i) "Memory function normal" and/or
 - ii) "Dementia screening declined";
 - b) Conducted a long term condition review which included a hypertension assessment without taking and/or recording:
 - i) the patients blood pressure; and/or
 - ii) a rationale for not taking the patients blood pressure
 - c) did not undertake and/or record in the patients notes an Admission Avoidance Care Plan;
- 8) Your conduct at any and/or all of charge 7(a) above as dishonest in that you
- i) knew that Patient D had dementia;
 - ii) knew that the entry in Patient D's records was inaccurate and/or misleading.
- 9) In relation to Patient E:
- a) Having diagnosed the patient has having Type II diabetes mellitus on 8 March 2016 did not:
 - i) inform the patient of the diagnosis;
 - ii) escalate the matter to a more senior member of staff for a medication review and/or to discuss the discuss the diagnosis with the patient;
 - iii) record any further action to be taken as a result of the diagnosis

- 10) In relation to Patient F, inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 6 March 2016 at 17:46 that a diabetic review had been undertaken;
- 11) Your conduct at charge 10 above was dishonest in that you knew that a diabetic review had not taken place and/or the entry in the records was inaccurate and misleading;
- 12) In relation to Patient G:
 - a) inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for 8 December 2015 that an asthma review had been undertaken;
 - b) did not record essential information including inhaler techniques and/or height and/or weight and/or spirometry.
- 13) Your conduct at any and/or all of charge 12 above was dishonest in that you knew an asthma review had not taken place and/or the entry in the records was inaccurate and misleading;
- 14) In relation to Patient H, inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for 20 January 2016 that the patient had declined a diabetic foot check
- 15) Your conduct at charge 14 above was dishonest in that you:
 - a) knew that the patient had not declined a diabetic foot examination;
 - b) knew that the patient had not chosen or agreed to be excepted from the diabetes quality indicators and/or not to be reviewed;
 - c) knew that you had not consulted with the patient regarding the matters referred to in the record on 20 January 2016 and/or at all;
 - d) knew that the entry in the patients records was inaccurate and/or misleading.
- 16) On or around 2 March 2016 and having been instructed to process only "normal" and/or diabetes-related pathology results processed all pathology reports, including those which were abnormal;
- 17) Your conduct at charge 16 above was:

- a) inappropriate;
- b) outside of the scope of your competence

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

Application to offer no evidence on charges 12, 13, 14 and 15

Mr Mladenovic, on behalf of the NMC, made an application to offer no evidence on charges 12, 13, 14 and 15. Mr Mladenovic submitted that evidence relating to charges 12 and 14 has not been forthcoming and that the NMC have not been able to identify patients from these charges. Due to this, he submitted, the NMC was unable to offer any evidence on charges 12, 13, 14 and 15.

The panel accepted the advice of the legal assessor.

The panel accepted the application. It had regard to the documentation before it and the content of charges 12 – 15. It took the view that evidence relating to these charges was not included in the bundle and accepted Mr Mladenovic's application to offer no evidence.

Application to adjourn

At the start of day three of the hearing having heard two of the NMC witnesses, Mr Mladenovic submitted that it was the NMC's intention to apply for an adjournment in light of the unavailability of the two remaining NMC witnesses.

Mr Mladenovic submitted that the application would be made in private under rule 19 of the NMC fitness to practice rules (2001) on the basis that it involved discussion of Ms 1's health. The panel accepted the advice of the legal assessor. On the basis that much of the application would relate to Ms 1's health condition, the panel accepted the application to hear the submissions in private.

Mr Mladenovic referred the panel to documentation that related to Ms 1's health. In particular he referred to page 2 of the document which stated "not fit to travel for next week, as previous hospital admissions due to this condition needs resting for the moment." The note was dated 1 October 2018. Mr Mladenovic explained that the medical condition had arisen on Sunday 30 September and Ms 1 had notified the Case Coordinator via email stating that she would not be able to attend on this date. The NMC Case Coordinator had seen the communication relating to this upon her return to work on Monday 1 October 2018 – the first day of this hearing. After seeing the email, the Case Coordinator asked Ms 1 to produce further evidence of her medical condition. Ms 1 was able to produce medical evidence later that day.

Mr Mladenovic also informed the panel that Mr 2 was unavailable to give evidence. He had arrived to give evidence at the start of day 2 but had been unable to do so due to matters that had arisen during the day at the hearing. Mr Mladenovic submitted that Mr 2 was not able to attend on any of the remaining scheduled days of the hearing due to work and child-care commitments.

Mr Mladenovic also referred the panel to the chronology of the review that had also been handed up. This chronology showed that a substantive hearing had been scheduled to take place in both February and June 2018 but had adjourned following requests made by you.

You opposed the application. [PRIVATE] In relation to the adjournment that was agreed in February, you submitted that you have demonstrated during your cross-examination of witnesses that this was valid and that you would not have been able to defend yourself if these documents had not been disclosed to you.

[PRIVATE] You said that you were keen to have the matter resolved. You said that you want an outcome and to prove your innocence.

With regard to the documentation provided by Ms 1, you said that if you had been in her position you would have provided much more to prove that you could not attend. You said that you find it strange where this document has come from.

You said that it is in the public interest to conclude hearings in a timely manner and that you might wish to return to nursing at some point. Further, you stated that it is in the interests of registrants that the hearing is concluded as it is their fees that are paying for it to continue.

[PRIVATE] Further, you said that delays in the case are not good for the memory and that the case adjourning does not seem fair or appropriate.

The panel accepted the advice of the legal assessor.

The panel accepted the application. It was of the view that your submissions included some very valid points but that the case involved serious allegations that needed to be investigated. The panel took account of the fact that Ms 1's evidence relates to most of the remaining charges and that she has agreed to give evidence on a later date when she will be able to attend.

The panel took account of the documentation provided by Ms 1. It had no reason to doubt the veracity of the documentation and believed it to be authentic. It also noted that Ms 1 has had previous admissions to hospital due to this condition.

The panel had regard to the public interest in the case and agreed that two and a half years is a considerable amount of time. However, it took the view that further delay was not disproportionate in light of the charges that have been brought against you.

The panel took account of documentation provided to it by you at the beginning of day 4 of the hearing. However, it was of the view that this did not change its decision in relation to the adjournment.

The panel was of the view that, upon commencement of the resuming hearing it would not be appropriate for Ms 1 to give evidence via video link. Her evidence is of great importance and is pertinent to many of the charges. Her attendance in person is necessary for a correct appraisal of her oral evidence and credibility.

The panel therefore agreed to the application to adjourn.

The hearing resumed on Monday 11 March 2019

Prior to the resumption of the hearing on Wednesday 13 March 2019, the panel secretary (Mr James) telephoned you to resume the video link before the hearing began for the day. At this point, you told Mr James (the Legal Assessor and Ms Ryder were also in the room) that you no longer wished to take part in the hearing for various personal reasons. Following this, an NMC Case Coordinator called you in order for you to confirm what you said. A telephone log was produced following the conversation between you and the NMC Case Coordinator. This stated:

“Telephone call to Kaye Pexton

I explained to Kaye that her hearing was starting soon and asked if she would like to participate today.

Kaye stated that she did not want anything more to do with the hearing. Kaye stated that the NMC has let witnesses lie in an open forum and (PRIVATE).

Kaye was very emotional and started breaking down the charges. Kaye said that the witness was lying and she was snooping in her business. Kaye stated that she has health issues because of this and that the witness is playing the NMC.

I asked Kaye if she had informed the panel of everything she has just told me as without her telling them they will not be able to take it into consideration. Kaye said that she did not want to engage anymore.

Kaye then ended the call.”

Having been informed that you no longer wished to engage with the NMC, Ms Ryder made an application for the hearing to proceed in your absence. Ms Ryder submitted that Miss Pexton has expressed that she wishes to voluntarily absent herself from the hearing and that it would not be appropriate to allow her further time to reflect on this decision, especially having had regard to the fact that Ms 1 is into her third day of giving evidence. She had only been warned to attend the hearing for two days by the NMC. Ms Ryder further submitted that it would not be right to adjourn the hearing at this stage as Ms 1 is on oath and submitted that the hearing should proceed in the absence of Miss Pexton on this basis.

The panel heard and accepted the advice of the legal assessor who, as well as going through the various matters that the panel would need to consider in coming to its decision, drew their attention to the cases of GMC v Adegoba; GMC v Vardis [2016] EWCA Civ 162 and the case of Lawrence v General Medical Council [2016] EWHC 215 (Admin).

In Lawrence, L absented herself part way through the Hearing. Holroyd J stated that, making every allowance for the stress of the proceedings and for the difficulty faced by a litigant acting in person, L could not complain about the decision of the panel to proceed to consider sanction in her absence. He pointed out that L knew what was at stake and knew that the panel had the power to proceed in her absence. He continued that, although L had been very distressed, she had been able to reflect on her position overnight and could have contacted the panel and/or the GMC if she wished to be allowed to defer her submissions until after the week end. She did not do so, nor did she ask her husband to do so, nor did she send in any written submission or request. The panel were left in a state of ignorance as to why L had not attended or when (if at all) she might be intending to return. The panel was not wrong to continue the hearing in her absence.

The panel was mindful of the fact that Miss Pexton appeared to be in a highly emotional state when she made the phone call, as witnessed by the Panel Secretary, the Legal

Assessor and the Case Presenter in the first instance and by the NMC Case Coordinator in the second instance as evidenced by the telephone log.

The panel was fully aware, as it had been advised, that although it had a discretion to proceed in absence, it had to approach the exercise of that discretion with the utmost care and caution. In ensuring that whatever decision it made, it had to be fair to all parties concerned in the case, including the Council and witnesses as well as Miss Pexton. It also bore well in mind the other considerations it had been advised that it should take into account.

The panel was mindful of the following –

- The witness, Ms 1 was into the third day of giving evidence, having been warned to attend the hearing for 2 days by the NMC and, should the matter be adjourned, would remain under oath until the adjourned hearing.
- Miss Pexton had indicated that she had concluded her cross-examination, subject to placing before the panel a document and asking whether the witness was aware of the content and if she agreed with it.
 - Neither the panel, not the NMC were in possession of this document and Miss Pexton agreed to email it so that the NMC could consider whether they objected to it being placed before the panel.
 - Once the NMC had received it and discussed it with the Legal Assessor, they had no objection to it being placed before the panel.
 - The purpose of the panel secretary phoning Miss Pexton on the morning of 13th March was to inform her of this fact.
 - The panel was informed that it had not been possible to communicate that fact to Miss Pexton whilst she were on the phone to the panel secretary.
 - The panel would have copies of the document, as Miss Pexton wished and the Legal Assessor was in a position, on Miss Pexton's behalf, to ask the question she wished to have put.

- Miss Pexton indicated the content of the document to her in cross-examination towards the end of proceedings on 12th March. Ms 1 indicated that she was aware of the content and did not disagree with it.

The panel decided that fairness to Ms 1 militated in favour of continuing with and concluding her evidence, but was very mindful of ensuring that no unfairness or prejudice to Miss Pexton could result if they were to take this course.

The panel decided that, as Miss Pexton had stated that she had concluded her cross-examination, subject to the one matter which it appeared would be answered in the way that she hoped, there would be no unfairness to Miss Pexton and no prejudice to her case if it allowed the Legal Assessor to ask the question on Miss Pexton's behalf.

The panel was mindful that Miss Pexton would not thereafter be present to hear any re-examination by the NMC, neither would she hear any questions put by the panel which would mean she would not be in a position to conduct any cross-examination that might arise from the panel's questions. The panel concluded that there would not be any unfairness or prejudice caused to Miss Pexton as a transcript of the questions and answers would be available to her at the adjourned hearing (this being a 'Split Event' in any case) and she would be able to conduct any cross-examination that might arise at that later stage.

The panel decided therefore to continue with and conclude the evidence of Ms 1 in Miss Pexton's absence and then consider whether it would be right proper and fair to proceed any further in Miss Pexton's absence.

Ms 1 continued with her evidence and confirmed that she agreed with the content of the document which was also placed before the panel as Miss Pexton had wished.

During the resumed evidence of Ms1, the Panel Secretary received two emails from Miss Pexton that were sent the night before, shortly after 23:00hrs. Although addressed

to the Panel Secretary, the content of the emails demonstrated that Miss Pexton wanted the panel to have sight of them. The emails were brought to the attention of the Legal Assessor who then discussed them with the Case Presenter in the absence of the panel.

The panel heard and accepted the advice of the legal assessor that, in addition to Miss Pexton's desire that the panel should see the emails, they were in any event admissible and relevant to whether it would be fair and proper for the proceedings to continue further in her absence, as they raised concerns as to Miss Pexton's current well-being and ability to continue to conduct her case at this stage.

The first email stated:

(PRIVATE)

The second email appeared to have been sent at 23:22. It stated:

(PRIVATE)

(PRIVATE)

(PRIVATE) Following this, a case management meeting could take place on 29 March 2019 with all parties in attendance. Ms Ryder submitted that the hearing could proceed as scheduled on 1 April 2019 for five days and that a further three days would be necessary to conclude matters. She said that if the panel was mindful for the hearing to proceed on April 8, 9 and 10 2019 then the NMC would instruct a new Case Presenter due to her own lack of availability.

The panel accepted the advice of legal assessor.

The panel determined that, having heard the NMC's submissions and taken account of the communication from Miss Pexton by email and telephone, the hearing should not proceed at this stage for reasons of fairness. It was of the view a case management meeting would not be necessary on 27 March 2019 as matters arising could be dealt with by all parties on 1 April 2019 when the hearing resumes.

The panel made the following direction:

1. (PRIVATE)

The panel had regard to Ms Ryder's submission that three extra days would need to be scheduled for the hearing and confirmed availability on 28, 29 and 30 May 2019.

The hearing will therefore resume on 1 – 5 April and 28, 29 and 30 May 2019.

Application for Interim order

(PRIVATE)

Decision and reasons on application under Rule 19

Prior to addressing the issue behind Miss Pexton's absence from the NMC register, Ms Ryder made a request that the whole of the application for an interim order, including that which took place the previous day, be held in private on the basis that the case involves discussion of Miss Pexton's health. The application was made pursuant to Rule 19 of the Rules.

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

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 the submission relating to Miss Pexton’s health and the indication that there will be further discussion regarding this, the panel determined to hold the entirety of the interim order application in private.

Miss Pexton’s NMC registration

Relating to Miss Pexton’s NMC registration, Ms Ryder stated that Miss Pexton had not appeared on the NMC register due to human error. She explained that the logistics of how this came about following the removal of a “multiple case” flag on the NMC Wyser system on 22 February 2018 when Miss Pexton had received a sanction in relation to another referral. Ms Ryder told the panel that this flag should have been replaced with an “under investigation” flag relating to this referral and that that flag would have meant that Miss Pexton’s registration would not have lapsed. Ms Ryder further explained that due to the flag being removed, when the sanction for the other referral expired in November 2018, the registration lapsed.

Ms Ryder submitted that this error was one of an administrative nature and that the statute categorically prevents any registrant’s registration from lapsing when they are under investigation by the NMC. Ms Ryder submitted that the mandatory provisions “trump” any clerical error.

The panel accepted the advice of the legal assessor. The Legal Assessor reminded the panel that the NMC submitted that Article 12 of the Nursing and Midwifery Order 2001 S.I. 2002 No 253 as well as Paragraph 14(4) of the Nursing and Midwifery Council (Education, Registration & Registration Appeals) Rules Order of Council 2004 S.I. 2004 No 1767 meant that registration could not lapse when a Registrant was the subject of an allegation.

The legal assessor advised the panel that, irrespective of the legislation referred to, Ms Pexton's registration had not 'Lapsed' when the first part of this hearing commenced on 1st October 2018, or indeed when it went part heard on 5th October 2018. In those circumstances, as this was a resumption of that Hearing, the apparent administrative error described by the Case Presenter, could not cause Ms Pexton's registration to lapse and did not in any event remove from the panel the jurisdiction it undoubtedly had in October 2018. The panel accepted that it had jurisdiction and would continue to hear submissions in relation to the application for the interim suspension order.

Following her submissions Ms Ryder alerted the panel to further correspondence that had been received from Miss Pexton in three separate emails the night before at 20:11, 20:25 and 20:28. These emails had been sent to the panel secretary. The panel took and accepted the advice of the legal assessor that these emails were also admissible and relevant for the reasons already set out in relation to the earlier emails. The email sent at 20:11 stated:

(PRIVATE)

The second email sent at 20:25 stated:

(PRIVATE)

The third email sent at 20:28 stated:

(PRIVATE)

(PRIVATE)

The Legal Assessor drew the panel's attention to the subject line of the emails sent by Miss Pexton on 13 March 2019 namely "esculte to my compalint and esculate immediatly this panel should not be sitting". The Legal Assessor and pointed out that

this might possibly constitute an application by her for the panel to recuse itself. The legal assessor advised the panel that, as it had already decided that it would be wrong and unfair to proceed any further with the hearing in the absence of Miss Pexton, it should not consider this matter any further and reserve its decision for the adjourned hearing on 1 April 2019, on which date Miss Pexton might appear and could have engaged with the NMC in the meantime.

(PRIVATE)

The panel also had regard to the serious nature of the charges whilst bearing in mind that they remain unproved at this stage.

(PRIVATE)

The panel also had regard to the public interest and was of the view that Miss Pexton's deteriorating engagement with the NMC and ongoing abuse of the panel and NMC staff demonstrate that an interim order is necessary.

The panel went on to consider if making an interim conditions of practice order would be appropriate. It was of the view that there were no workable conditions that would allow Miss Pexton to practise safely given her recent correspondence with the NMC.

The panel had regard to the fact that the hearing is due to resume on 1 April 2019 for five days and is then due to conclude after three further days in May 2019. It was of the view that imposing the order for a period of six months would ensure adequate protection of the public and was appropriate and proportionate.

The panel therefore made an interim suspension order for a period of six months.

The hearing will resume on 1 April 2019.

The hearing resumed on 1 April 2019

Attempts were made to contact Miss Pexton when the hearing was due to resume. It appeared that her mobile phone, which she had used in the hearing prior to the adjournment, was switched off. The panel chair announced that the panel would wait for a while longer to allow Miss Pexton to be available to attend the hearing. By 11:00hrs Miss Pexton was still uncontactable.

Ms Ryder made an application to proceed in the absence of Miss Pexton. She submitted that notice of the resuming hearing had been sent to Miss Pexton in good time on 6 February, although the 28 day notice period required for substantive hearings was not applicable to resuming substantive hearings. Ms Ryder informed the panel that further notice of the resuming hearing alongside information relating to the extra dates agreed to when the case adjourned in March was sent to Miss Pexton's registered address on 25 March.

The panel accepted the advice of the legal assessor in relation to service. Having taken into account the submissions made, the panel decided that service of notice had been in accordance with the rules.

Ms Ryder went on to make submissions in relation to proceeding in the absence of Miss Pexton. Ms Ryder referred the panel to a bundle of documents that the panel had sight of prior to the application. She submitted that it is evident that Miss Pexton had re-engaged with the NMC and (PRIVATE).

Ms Ryder submitted that this is the third sitting of the hearing and that seeing it through to its finality was in the interests of both the NMC and Miss Pexton. She further submitted that Miss Pexton is well aware of the logistics of the hearing and would have been expecting the phone call to commence proceedings at the start of the hearing today. Ms Ryder submitted that the unconnected phone line could mean that Miss Pexton has voluntarily absented herself from the hearing.

Ms Ryder submitted that adjourning the hearing would serve no useful purpose and that there is no guarantee that Miss Pexton would attend the hearing were the panel to adjourn proceedings. (PRIVATE) Ms Ryder submitted that she would urge the panel not to adjourn until the next day of the hearing in order to gather information and submitted (PRIVATE).

The panel accepted the advice of the legal assessor.

The panel had regard to the fact that this was the second time that the hearing had resumed and it had been under the impression that Miss Pexton had re-engaged and was ready to attend the hearing. It considered that Miss Pexton not answering the phone did not amount to voluntarily absenting herself, as it did not know the reasons why she had not answered the call, especially following her wish to re-engage with the NMC process following the previous adjournment.

(PRIVATE)

The panel took account of the fact that Miss Pexton's engagement status with the NMC had changed throughout the proceedings and that this apparent decision to disengage may not be her final involvement in the hearing process.

The panel directed the NMC to collate the information relating to the communication between Miss Pexton and the NMC, (PRIVATE), which would assist in its decision making. It therefore made a direction that this information, alongside further attempts by the NMC to contact Miss Pexton, should be provided and that Ms Ryder could report back to the panel the following day with this information.

The hearing adjourned until 09:30hrs the following day.

Upon resumption of the hearing the next day (2 April 2019), the panel took receipt of various documents relating to proceedings. This included:

- Correspondence between Miss Pexton and the NMC Case Coordinator;
- (PRIVATE);
- (PRIVATE);
- Telephone logs of attempts made to call Miss Pexton on 1 April 2019;
- A telephone log of a call between Miss Pexton and the NMC Case Coordinator on 13 and 19 March 2019
- (PRIVATE)

Ms Ryder informed the panel that three further attempts had been made to contact Miss Pexton that morning but that her phone was not being answered, despite the fact it was now ringing. She submitted that the NMC had made exhaustive attempts to contact Miss Pexton, including via email.

(PRIVATE)

(PRIVATE)

Ms Ryder submitted that the NMC's application remained for the hearing to proceed in her absence. She further submitted that to adjourn would not be in either the public interest nor Miss Pexton's own interests. (PRIVATE)

(PRIVATE)

The panel recognised that if it were a physical issue suffered by Miss Pexton it would do everything to ensure her engagement if this were possible (PRIVATE)

. However, it also noted that there was no medical evidence before it that suggested that she could not engage in NMC proceedings or that her mental health issues were current and ongoing.

The panel considered that proceedings could not adjourn in the continuing hope that Miss Pexton would re-engage with the NMC process having had no information relating to the possibility of this. The panel took account of the fact that Miss Pexton is well versed to the hearing process having attended the first two parts of the substantive hearing via video link and would have indicated that she wanted to attend, if she wished to, in her communications with the NMC. The panel concluded that the NMC had gone to great lengths to ascertain confirmation of Miss Pexton's engagement status and had received nothing back from her.

Further, the panel considered the telephone log dated 19 March 2019 to be of great importance. It showed that Miss Pexton was unsure if she wanted to engage in the process any further. It also noted that during her re-engagement with the NMC, Miss Pexton had never confirmed that she wished to attend the resuming hearing.

The panel therefore decided to proceed in the absence of Miss Pexton.

Application for panel to recuse itself

The legal assessor drew the panel's attention to the emails from Miss Pexton, as outlined earlier, from which it might be thought that she was applying for the panel to recuse itself.

Ms Ryder submitted that the NMC do not consider that Miss Pexton has made a formal application for the panel to recuse itself and that she has made no suggestion that the panel is in any way biased. Ms Ryder submitted that a well-informed member of the public would take the view that the panel conducted itself with utmost fairness giving Miss Pexton ample time to formulate questions and generous latitude to question witnesses.

The panel agreed that Miss Pexton had not made a formal application for the panel to recuse itself. Further, it was of the view that the panel had shown no bias and had

demonstrated complete fairness towards Miss Pexton in the conduct of her case as an unrepresented registrant.

The panel therefore determined not to recuse itself.

Application to amend charges

Upon resumption of the hearing, Ms Ryder made an application to amend four of the charges before the panel. The amendments were as follows (amended parts underlined):

Charge 3b which currently reads as:

- b) Did not record an entry of any telephone conversation and/or appointment with Patient A in relation to 3 March 2016;

To be amended to read:

- b) Did not record an entry of any telephone conversation and/or appointment with Patient B in relation to 3 March 2016;

Charge 8, which currently reads as

- 8) Your conduct at any and/or all of charge 7(a) above as dishonest in that you

To be amended to read:

- 8) Your conduct at any and/or all of charge 7(a) above was dishonest in that you

And two charges to charge 9 which currently reads as:

9) In relation to Patient E:

a) Having diagnosed the patient has having Type II diabetes mellitus on 8 March 2016 did not:

i) inform the patient of the diagnosis;

ii) escalate the matter to a more senior member of staff for a medication review and/or to discuss the discuss the diagnosis with the patient;

In order to remove the underlined words. The charge would be amended to read as:

9) In relation to Patient E:

a) Having diagnosed the patient as having Type II diabetes mellitus on 8 March 2016 did not:

i) inform the patient of the diagnosis;

ii) escalate the matter to a more senior member of staff for a medication review and/or to discuss the diagnosis with the patient;

Ms Ryder submitted that all amendments were typographical and that no prejudice would be caused to Miss Pexton.

The panel accepted the advice of the legal assessor.

The panel was of the view that the amendments, as applied for, were in the interest of justice. The panel was satisfied that there would be no prejudice to Miss Pexton 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 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 Ms Ryder, on behalf of the NMC and those made by Miss Pexton in writing by way of her statement, as well as her verbal observations during the course of her cross-examination of the witnesses.

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 has drawn no adverse inference from the non-attendance of Miss Pexton following the evidence of Ms 1.

Background

The incidents that resulted in the referral to the NMC are said to have taken place when Miss Pexton was employed as a Registered Nurse at the Fieldhouse Surgery (“the Surgery”). The allegations relate to six patients and involve a variety of care concerns including inaccurate and misleading documentation together with dishonesty relating to this.

In reaching its decisions on the facts, the panel took into account all the oral and documentary evidence in this case. The panel heard oral evidence from three witnesses called on behalf of the NMC:

- Mr 3 – Advanced Nurse Practitioner
- Ms 4 – Director of Nursing
- Ms 1 – Advanced Nurse Practitioner

The panel considered the reliability of each witness.

The panel considered that Mr 3 was useful in providing a context to the stressful working environment at the Surgery which appeared to burden staff, many of which were unestablished, with a heavy workload. Further, Mr 3's evidence was also able to provide context relating to the relationship between Miss Pexton and Ms 1.

The panel was of the view that Mr 3's evidence was straightforward and credible, despite difficult circumstances that he had been working under. Further he was clearly attempting to assist the panel in his evidence. The panel took the view that Mr 3 was very forthright and did not appear to have an agenda against Miss Pexton or anyone else at the Surgery. The panel noted that when Mr 3 did not know the answer to a question, he was honest in letting the panel know this was the case. Overall the panel found Mr 3 to be a useful, credible and reliable witness.

The panel considered that Ms 4 did her best to assist the panel but much of the time had to rely on information that had been passed onto her by others. It was clear that Ms 4 had tried to investigate the allegations to the best of her abilities, but in light of her lack of primary evidence, her value was limited. The panel found that Ms 4's evidence provided a more corporate approach and it is apparent that she was in a difficult position due to staff conflict at the Surgery. The panel concluded that although the areas that Ms 4 could provide direct evidence in relation to were somewhat narrow, she did not, at any time, attempt to mislead the panel and managed to formulate responses to Miss Pexton despite intense cross-examination.

The panel recognised that Ms 1's evidence came across in an emotional way when she first gave evidence but took the view that the longer she answered questions the more methodical she became in her responses. The panel took the view that Ms 1 was honest and forthright and noted that she remained consistent, despite repeated attempts by Miss Pexton that were made to frame the questions in a different way.

The panel determined that Ms 1 was clear, concise and competent in her evidence and that she had been consistent with both her local reporting and her NMC statement. The panel recognised that Ms 1 had withstood prolonged and intense cross-examination by Miss Pexton and remained clear and consistent in her account of what had happened, alongside her expectations of Miss Pexton in her role as a Registered Nurse. The panel found Ms 1 to be a believable witness, who conceded when questions were outside of her scope of knowledge. Further, the panel noted that she was willing to listen and take account when failings might have occurred. Overall, the panel considered Ms 1 to be an experienced and competent nurse which enhanced her credibility.

The panel took account of the fact that Miss Pexton did not give evidence but had made her case very clear during some of her cross-examination of the witnesses. The panel had regard to the telephone log dated 19 March 2019 during which she had stated her uncertainty at continued engagement in the NMC process. It recognised the frustration that she had felt along with the feelings of anger (PRIVATE) and did not, in any way, hold her lack of engagement following the evidence of Ms 1 against her. The panel also noted allegations that had been made in relation to Miss Pexton's personal life by Ms 1. It did not take these allegations into account and, furthermore, considered them to be irrelevant to proceedings.

The panel then went on to consider the charges.

The panel considered each charge and made the following findings:

Charge 1a(i):

1) In relation to Patient A:

a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:57;

i) that the patient had declined a diabetic foot examination;

This charge is found proved.

The panel took account of the fact that the entry made at the time included in the charge was outside of the opening hours of the Surgery. This entry was made by Miss Pexton at home on the laptop that she had only been issued from the Surgery in order to study an academic course.

The panel took account of Miss Pexton's view on her use of a work laptop at home in a letter to the NMC dated 16 April 2016. In this letter she explained that it had been agreed that she would work one hour a week at home and that this would often be early AM or late PM. Miss Pexton, in the letter, denied that she used the laptop in "an inappropriate manner."

The panel noted the evidence of Ms 1. In her NMC statement she recalled finding the out of hours entries and said:

"This entry records the patient as having declined a diabetic foot examination and as having been excepted from diabetes quality indicators. This means the patient has chosen not to be reviewed. So they would receive their medication without any review of their condition. I would have never exempted any patient from a clinical indicator. This has a very significant impact on a patient's care and I

would always leave it to a doctor. In my experience there are very few diabetics who do not want to be reviewed for their condition.”

The panel also had regard to the live evidence of Ms 1 at the hearing. At this time she explained the importance of the undertaking of a foot examination of a diabetic patient and said that she did not believe that Miss Pexton had undertaken a conversation with Patient A at the time quoted during which he had declined the foot examination. She explained that the patient needed to be in attendance to decline the examination and that there was no evidence that he had been.

The panel considered Ms 1’s evidence to be entirely credible in relation to the requirement for Patient A to participate in a consultation in order to decline a diabetic foot examination. The panel therefore found the charge proved.

Charge 1a(ii)

1) In relation to Patient A:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:57;
- ii) that the patient was “Excepted from diabetes quality indicators: Informed dissent” and/or had chosen not to be reviewed;

This charge is found proved.

The panel had regard to the exception reporting guidance as provided by Miss Pexton at the start of the hearing within her bundle. The guidance relating to exception reporting criteria stated that:

“patients may be excepted if they fall within the strict criteria detailed below:

- Patients who have been recorded as refusing to attend review who have been invited on at least three occasions during the financial year to which the achievement payments relate (except in the case of payment indicator CS002, where the patient should have been invited on at least three occasions during the period of time specified in the indicator during which achievement is to be measured (eg the preceding five years ending on 31 March in the financial year to which achievement payments relate).
- Patients for whom it is not appropriate to review the chronic disease parameters due to particular circumstances, eg a patient who has a terminal illness or is extremely frail
- Patients newly diagnosed or who have recently registered with the contractor who should have measurements made within three months and delivery of clinical standards within nine months eg blood pressure or cholesterol measurements within target levels
- Patients who are on maximum tolerated doses of medication whose levels remain sub-optimal
- Patients for whom prescribing a medication is not clinically appropriate eg those who have an allergy, contra-indication or have experienced an adverse reaction
- Where a patient has not tolerated medication
- Where a patient does not agree to investigation or treatment (informed dissent) and this has been recorded in their patient record following a discussion with the patient
- Where the patient has a supervening condition which makes treatment of their condition inappropriate eg cholesterol reduction where the patient has liver disease
- Where an investigative service or secondary care service is unavailable.

The panel considered that the criteria is very clear and much like the previous charge, took the view that it was apparent that the discussion between Miss Pexton and Patient

A did not take place at the time as outlined in the charge. The criteria also made clear that the non-attendance of the patient alone was not sufficient and that further detailed reasoning should be recorded in the medical records.

During cross-examination Ms 1 resisted the repeated assertion of Miss Pexton that exempting Patient A in the manner outlined was appropriate and safe for Patient A's future care. Further, she told the panel that she had not been consulted by Miss Pexton in relation to Patient A's exemption from diabetes quality indicators and should have been before the decision to do so was taken.

The panel therefore found the charge proved.

Charge 1b

1) In relation to Patient A:

- b) Did not record an entry of any telephone conversation and/or appointment with Patient A in relation to 3 March 2016;

This charge is found not proved.

The panel found that no phone call had been made. Indeed it was not suggested by the NMC that one had been made. The panel therefore found the charge not proved.

Charge 1c

1) In relation to Patient A:

- c) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.

This charge is found proved.

The panel took account of Patient A's records. It was apparent that there was no evidence that stated why Patient A had been exempted from clinical indicators by Miss Pexton.

The panel also had regard to Ms 1's evidence in relation to this charge. She was unambiguous in her view that it was "sound practice" to document decisions in relation to a patient's care as that would have an impact on how they were cared for in the future. Ms 1 clarified during cross-examination that Miss Pexton had only "checked a tick box" in relation to Patient A's exemption and had not stated the reason in detail as required.

In the absence of any evidence of any adequate reasoning being recorded and the evidence of Ms 1, the panel found the charge proved.

Charge 2

- 2) Your conduct at any and/or all of charge 1(a) above was dishonest in that you:
- a) knew that Patient A had not declined a diabetic foot examination;
 - b) knew that Patient A had not chosen or agreed to be excepted from the diabetes quality indicators and/or not to be reviewed;
 - c) knew that you had not consulted with Patient A regarding the matters referred to in the record on 3 March 2016 and/or at all;
 - d) knew that the entry in Patient A's records was inaccurate and/or misleading.

The panel found the charge proved.

In making a decision on dishonesty the panel took into account the advice of the legal assessor. He referred the panel to the case of Ivey v Genting (UK) Ltd t/a Crockfords [2017] UKSC 67 in which the Supreme Court decided that it was not right that the test of dishonesty should differ depending on whether the proceedings were Criminal or Civil.

The legal assessor advised the panel that:

1. The first thing you must do is ascertain (subjectively) what the registrant's actual knowledge or belief was in relation to the facts as you have found them to be;
 - a. It does not matter whether that state of knowledge or belief was reasonable. There is no requirement that the knowledge or belief held by the registrant has to be reasonable; the requirement is that it must be genuinely held.
 - b. Of course, if you consider that the knowledge or belief that the Registrant claims they hold is reasonable, that may well help you to decide whether, on a balance of probabilities, the registrant did in fact hold it. In many cases, the fact that you decide that the belief is reasonable will be determinative of your decision whether she did in fact genuinely hold it.
2. Once you have established, on a balance of probabilities, what the registrant's actual knowledge or belief was, you must then go on to decide whether what you have found the registrant did, in the context of that knowledge, would be considered to be dishonest by the standards of ordinary decent people (objective).
3. You must form your own judgement of what the standards of ordinary decent people would be in the circumstances of this case and apply them.
4. If, applying those standards, you decide that, on a balance of probabilities, what the Registrant did was not dishonest, then the charge has not been proved.
5. If, on the other hand, you are satisfied that, on a balance of probabilities, ordinary decent people would consider what the Registrant did to have been dishonest, then dishonesty would have been proved.

6. It is NOT a requirement that the registrant must have appreciated that what she did was, by those standards, dishonest.
7. Although truthfulness is one characteristic of honesty and untruthfulness is often a powerful indicator of dishonesty, a dishonest person may sometimes be truthful about her dishonest opinions
 - a. It therefore follows that the fact that you find that the registrant has been truthful in stating that she did not regard what she did as being dishonest, does not mean that she was being honest.

The panel went through each allegation taking into account what it perceived as Miss Pexton's intention in her actions. In relation to the diabetic foot inspection, the panel recognised that Miss Pexton knew that the conversation between her and Patient A had not taken place and that he had not declined the foot examination, but completed the clinical record which, going by the guidelines, suggested that it had done. It was Miss Pexton's view that Patient A had declined by not responding to the letter sent to him. However, the panel did not align with her version of events. It applied the common sense definition of "decline" that this required a positive assertion by a fully informed patient and this was not the case here.

Likewise, the panel recognised that a consultation had not taken place between Miss Pexton and Patient A during which they consented from being exempt from the quality indicators. Miss Pexton, however, made an entry in the records that implied that this had taken place. Similarly, the panel took account of the time that Miss Pexton had completed the record and the fact that she would have done so on the laptop that she had use of for the purpose of study. It determined that Miss Pexton would have been clear on the fact that she had not consulted with Patient A as she should have. Finally, it is apparent that Miss Pexton would have known that the record was inaccurate as she knew she had not had a consultation with Patient A and this was therefore misleading, as it appeared on the record that it had taken place. The panel took account of the evidence of Ms 1 that this record could have had a major bearing on the future care of Patient A.

The panel therefore concluded that Miss Pexton was aware of how she had misled and misrepresented what had happened in each element of the charge and had therefore been dishonest.

The panel then went on to consider how the standards of ordinary decent people might find Miss Pexton's actions to have been in relation to charge 1. It considered that, if this person had regard to the evidence that it had heard alongside documents that it had been provided with, such as the exemption reporting guidelines, it could only conclude that Miss Pexton's behaviour had been dishonest. The panel determined that the entry in the medial record implied a consultation with Patient A had taken place, when in fact it had not. Patient A had not declined the diabetic foot examination and/or agreed to be exempted from the quality indicators.

The panel therefore determined that Miss Pexton's actions in charge 1 had been dishonest. It therefore found the charge proved.

Charge 3a(i):

3) In relation to Patient B:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:01;
 - i) that there had been a "Type II diabetic dietary review";

This charge is found proved.

The panel had regard to the evidence of Ms 1 as included in her NMC statement. She said:

“These entries were made from home remotely, and taken with the errors below, there are too many to explain as mere inadvertent mistakes.”

Further, she stated:

“I do not believe it is correct practice to simply decline or exempt a patient on the system without communicating with patients first.”

Ms 1’s evidence was consistent with this view during her oral evidence at the hearing. She stated that there had been an inaccurate entry as Patient B was not present and so it was impossible for Miss Pexton to have completed the review as stated. Ms 1 also commented that the HbA1c blood results had not yet been received which meant that the record would have been completed pre-emptively.

The panel was aware that Miss Pexton had a work laptop at home and that the Surgery was not open at the time that the record had been made.

The panel took account of Miss Pexton’s letter to the NMC dated 16 April 2016. In this letter Miss Pexton outlined that when reviewing any part of diabetes care for a patient she would “hit on the diabetic review box”. The panel took the view that, at this time, Miss Pexton had not done anything on the record other from state that Patient B had declined a diabetic foot examination. Further, there was no evidence to suggest that Miss Pexton had been involved in a consultation with Patient B, that supported Miss Pexton’s assertion contained within her letter to the NMC.

The panel determined that there was no evidence before it that Miss Pexton had undertaken a type II diabetic dietary review with Patient B. It therefore found the charge proved.

Charge 3a(ii)

3) In relation to Patient B:

a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:01;

ii) that the patient had declined a diabetic foot examination;

This charge is found proved.

The panel, as was the case with the allegations referring to Patient A, took account of the fact that Miss Pexton was in possession of a laptop from the Surgery in order to study from home and that the record contained within the charge was alleged to have been completed at a time when the Surgery was not open. For this reason, it determined that Miss Pexton did not take part in a consultation with Patient B at 20:01 as implied in the medical record entry. This record was viewed by the panel as part of Patient B's notes. The panel recognised that if Patient B had not been in attendance, he would not have been able to decline the examination.

The panel also had regard to the criteria as included in the exception reporting as outlined at charge 1. It is apparent from the Patient notes that Miss Pexton did not use this criteria appropriately.

The panel also took account of the evidence of Ms 1. She was clear that Miss Pexton should not have used Patient B's declining of other medical examinations as reason that Patient B would also decline a diabetic foot examination. Further, Ms 1 disagreed with Miss Pexton's assertion, during cross-examination, that foot examinations are a minor area of care, stating that the potential implications of such a failure could lead to serious personal consequences including the loss of a limb.

For these reasons, the panel found the charge proved.

Charge 3b

3) In relation to Patient B:

- b) Did not record an entry of any telephone conversation and/or appointment with Patient B in relation to 3 March 2016;

This charge is found not proved.

The panel found that no phone call had been made. Indeed it was not suggested by the NMC that one had been made. The panel therefore found the charge not proved.

Charge 3c

3) In relation to Patient B:

- c) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.

This charge is found proved.

The panel took account of the evidence of Ms 1. In her NMC statement she commented on the dangers of exempting patients from clinical indicators and the importance of recording the conversation preceding this decision and the reasons for it. Further, she told the panel that a patient's non-attendance at the Surgery would not mean that they have declined diabetic foot examination and that they would need to inform the Surgery directly if this was their wish.

Ms 1 disagreed with the assertions made by Miss Pexton during cross-examination that since Patient B was under the care of the District Nurse, they would therefore assume full responsibility for the care of the patient's diabetes. Further, she said that Miss

Pexton needed to document that she had exempted on behalf of Patient B as they had not been in attendance at the Surgery.

The panel therefore found the charge proved.

Charge 4:

- 4) Your conduct at any and/or all of charge 3(a) above was dishonest in that you:
- a) knew that you had not conducted a “Type II diabetic dietary review”;
 - b) knew that Patient B had not declined a diabetic foot examination;
 - c) knew that you had not consulted with Patient B regarding the matters referred to in the record on 3 March 2016 and/or at all;
 - d) knew that the entry in Patient B’s records was inaccurate and/or misleading.

This charge is found proved.

In making this decision, the panel again had regard to the legal assessor’s advice in relation to the case of Ivey v Genting (UK) Ltd t/a Crockfords [2017] UKSC 67 and the principles behind it.

The panel first took into account Miss Pexton’s thinking in relation to all of the allegations included in the charge. It determined that it would have been apparent that she had known that she had not completed the diabetic dietary review and had not had a consultation in which Patient B had declined a diabetic foot examination. Having not spoken to Patient B, and seemingly taking Patient B’s non-engagement as a sign of declining, it is clear that Miss Pexton knew that she had not consulted with Patient B

about the changes to the medical record. By this very nature it would be apparent to Miss Pexton that Patient B's records were inaccurate and/or misleading.

The panel then went on to consider how ordinary decent people would view Miss Pexton's actions. The panel determined that Miss Pexton's actions, in stating a patient had declined a foot examination and had been subject to a diabetic dietary review when they had not would be particularly misleading and would clearly result in misleading and inaccurate information in Patient B's records.

In conclusion, the panel therefore determined that Miss Pexton had been dishonest in relation to her actions at charge 3a). It therefore found the charge proved.

Charge 5a(i)

5) In relation to Patient C:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:59;
 - i) that the patient had declined a diabetic foot examination;

This charge is found proved.

The panel had regard to the oral evidence of Ms 1 during her cross-examination by Miss Pexton. During the cross-examination, Miss Pexton asserted that she had not had a face to face meeting with Patient C and had marked his record as "declined" as they had not engaged. Ms 1 had told the panel that this was neither appropriate nor accurate as Patient C should have attended the Surgery and stated that he "declined" the foot examination following consultation, for this to be included in the record.

The panel determined that Miss Pexton had not had a consultation with Patient C due to the entry in the medical records being made outside of Surgery hours. In light of this Patient C had not been present to state that they “declined” the diabetic foot examination.

The panel again applied the common sense definition of “decline” that this required a positive assertion by a fully informed patient and this was not the case here.

The panel therefore determined that the entry was inaccurately recorded by Miss Pexton. The panel found the charge proved.

Charge 5a(ii)

5) In relation to Patient C:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:59;
- ii) that the patient was “Excepted from diabetes quality indicators: Informed dissent” and/or had chosen not to be reviewed;

This charge is found proved.

The panel noted Patient C’s apparent disengagement with the Surgery and the fact that they did not appear to have a consultation with Miss Pexton. Ms 1 resisted Miss Pexton’s assertions during her cross-examination that this non-engagement was sufficient to record Patient C’s exemption from successful measurement under the Quality Outcome Framework (QOF). The panel had regard to the exception reporting guidelines that were produced by Miss Pexton to cross-examine Ms 1. The panel in particular took account of the following sections:

- “Patients not responding to invitations to attend or failing to arrive at appointments cannot be exception reported under criteria G eg DNA alone does not fulfil the criteria for informed dissent”.
- “where a patient does not agree to investigation or treatment (informed dissent) and this has been recorded in their patient record following a discussion with the patient”

The panel noted that Ms 1 was clear that Patient C had not given “informed dissent” as was being asserted by Miss Pexton due to the lack of any evidence of consultation in the medical records.

The panel therefore found the charge proved.

Charge 5a(iii)

5) In relation to Patient C:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:59;
- iii) Did not record an entry of any telephone conversation and/or appointment with Patient C in relation to 3 March 2016;

This charge is found not proved.

The panel found that no phone call had been made. Indeed it was not suggested by the NMC that one had been made. The panel therefore found the charge not proved.

Charge 5a(iv)

5) In relation to Patient C:

- a) Inaccurately recorded, or caused to be recorded, an entry in the patients electronic record for the 3 March 2016 at 20:59;

- iv) Did not record any, or any adequate, reasoning for exempting the patient from clinical indicators and/or in relation to the consultation.

This charge is found proved.

The panel had regard to Patient C's medical records and could not find any adequate information relating to their exemption from clinical indicators/and or in relation to a consultation.

It noted that the record had been made by Miss Pexton when the Surgery was closed and, for that reason, a consultation could not have taken place between them.

Ms 1's evidence was that there was a lack of documentation relating to Patient C's exemption from clinical indicators and that it was not in accordance with the exception reporting guidelines to remove patients from this without a consultation with the patient.

The panel noted that the exception reporting guidelines, produced by Miss Pexton, supported Ms 1's evidence and stated that there must be recorded clinical reasons for that evidence. The panel determined that, in relation to Patient C's medical record, this had not been completed. The panel therefore found the charge proved.

Charge 6

- 6) Your conduct at any and/or all of charge 5(a) above was dishonest in that you:
 - a) knew that Patient C had not declined a diabetic foot examination;

- b) knew that Patient C had not chosen or agreed to be excepted from the diabetes quality indicators and/or not to be reviewed;
- c) knew that you had not consulted with Patient C regarding the matters referred to in the record on 3 March 2016 and/or at all;
- d) knew that the entry in Patient C's records was inaccurate and/or misleading.

This charge is found proved.

In making this decision, the panel again had regard to the legal assessor's advice in relation to the case of Ivey v Genting (UK) Ltd t/a Crockfords [2017] UKSC 67 and the principles behind it.

The panel first took into account Miss Pexton's thinking in relation to all of the allegations included in the charge. It determined that Miss Pexton knew that Patient C had not been in attendance to decline the diabetic foot examination, or provide their consent to be exempted from the diabetes quality indicators. In light of Patient C's non-engagement in the process, it would have been apparent to Miss Pexton that they had not been consulted. Further, in light of this, she would have recognised that Patient C's records were misleading, as it appeared that she had undertaken a consultation with Patient C during which they had consented to their exemption, when they had not.

The panel went on to consider how ordinary decent people may consider Miss Pexton's actions at charge 5. It considered that they would note that she had used the Surgery's computer to state that she had been in face to face contact with Patient C when she had not. Further, they would have been made aware of the best practice of the Surgery as outlined by Ms 1. The panel determined that an ordinary decent person would recognise that Patient C's notes would not reflect what had actually happened and would consider

that this had been the result of Miss Pexton attempting to mislead and therefore being dishonest.

Charges 7a(i) & (ii)

7) In relation to Patient D on 10 March 2016:

- a) Inaccurately recorded, or caused to be recorded, the following in the patients electronic record at 12:59;
 - i) “Memory function normal” and/or
 - ii) “Dementia screening declined”;

This charge is found NOT proved.

The panel had regard to Patient D’s notes and took account of the fact that no information had been provided to it that confirmed that Patient D suffered from dementia on the basis of the medical records available.

Ms 1, in her oral evidence, outlined that the Surgery computer system would flag patients’ diagnosed conditions on a home screen. The panel did not see the computer system in operation. Ms 1 conceded that on the basis of the medical records that were available to her and the panel, the care delivered by Miss Pexton was appropriate in the absence of the diagnosis of dementia.

The panel therefore determined that the NMC had not reached the burden of proof in relation to either charge 7a)i) or 7a)ii. The panel therefore found the charges not proved.

Charge 7b(i) & (ii)

7) In relation to Patient D on 10 March 2016:

b) Conducted a long term condition review which included a hypertension assessment without taking and/or recording:

i) the patients blood pressure; and/or

ii) a rationale for not taking the patients blood pressure

This charge is found proved.

The panel had regard to the evidence of Ms 1. She told the panel that taking the patient's blood pressure during a hypertension review was integral. She also told the panel that Patient D's blood pressure had been taken on 19 January 2016 which was too long ago to be used during the hypertension assessment on 10 March 2016. She explained that it was necessary for the blood pressure of a patient to be taken at this time and questioned why this had not happened since it was the purpose of the consultation.

Examination of the medical records showed no reason for the blood pressure not to have been taken.

Miss Pexton asserted in her questioning that the blood pressure would only need to be taken once annually in accordance with NICE guidelines, yet Ms 1 resisted that this allowed the hypertension review to take place without this reading, and hence Miss Pexton had not completed the review as documented.

On the balance of probabilities, the panel preferred the evidence of Ms 1 that the blood pressure needed to be taken at the hypertension assessment and found that it was not

taken. The panel therefore found the charge proved in relation to the fact that Patient D's blood pressure was not taken and no rationale was provided.

Charge 7c

7) In relation to Patient D on 10 March 2016:

- c) did not undertake and/or record in the patients notes an Admission Avoidance Care Plan;

This charge is found NOT proved.

The panel had regard to the evidence before it that indicated that Miss Pexton had been told by the preceding nurse to tick the box marked "admission avoidance care plan".

The panel had regard to the fact that it had not been provided with templates or reasoning on why the form should have been completed by Miss Pexton.

It was of the view that the NMC had not reached the burden of proof that stated that it was Miss Pexton's responsibility to complete Patient D's notes in an admission avoidance care plan.

The panel therefore found the charge not proved.

Charge 8

8) Your conduct at any and/or all of charge 7(a) above was dishonest in that you

- i) knew that Patient D had dementia;
- ii) knew that the entry in Patient D's records was inaccurate and/or misleading.

This charge is found NOT proved.

Having found charge 7a not proved, the panel determined it was not obliged to consider charge 8. It therefore found the charge not proved.

Charge 9a(i)

9) In relation to Patient E:

a) Having diagnosed the patient as having Type II diabetes mellitus on 8 March 2016 did not:

i) inform the patient of the diagnosis;

This charge is found NOT proved.

The panel had regard to the evidence of Ms 1 who explained the process of informing a patient of a diabetes diagnosis. She explained that it was common practice at the Surgery for a task to be sent electronically to the receptionist to ask the patient to come in for an appointment in order for the diagnosis to be explained. The records of Patient E confirm that Miss Pexton followed the established process in place. Further, the records also demonstrate that Patient E already had a GP appointment booked.

The panel recognised that that Miss Pexton had taken all of the steps as expected in her role relating to diabetes diagnosis, within her own practice environment.

The panel therefore found the charge not proved.

Charge 9a(ii)

9) In relation to Patient E:

a) Having diagnosed the patient as having Type II diabetes mellitus on 8 March 2016 did not:

ii) escalate the matter to a more senior member of staff for a medication review and/or to discuss the diagnosis with the patient;

This charge is found NOT proved.

The panel determined that as Miss Pexton was the only nurse at the Surgery with a diploma in diabetes, there was no need to escalate the diagnosis further.

The panel was of the view that had a submission of no case to answer been made at the close of the NMC's case on this charge, it would have been accepted by the panel.

The panel therefore found the charge not proved.

Charge 9a(iii)

9) In relation to Patient E:

a) Having diagnosed the patient as having Type II diabetes mellitus on 8 March 2016 did not:

iii) record any further action to be taken as a result of the diagnosis

This charge is found NOT proved.

The panel had regard to Patient E's medical notes. It noted that the statement of "abnormal – make an appointment to see nurse – communicate to patient". It was

apparent that this statement had been recorded by Miss Pexton following Patient E's diabetes diagnosis.

The panel, therefore concluded that Miss Pexton did take further action as a result of the diagnosis. It found the charge not proved.

Charge 10

10) In relation to Patient F, inaccurately recorded, or caused to be recorded, an entry in the patient's electronic record for the 6 March 2016 at 17:46 that a diabetic review had been undertaken;

This charge is found proved.

The panel took account of Miss Pexton's comment as included in her letter to the NMC dated 16 April 2016. In the letter she set out the circumstances that led to her working on the case at the time stated and said that:

"it is normal practice when I am reviewing any part of diabetes care that I would hit on the diabetic review box."

She stated that it was not a case of falsifying records and that she considered the filing of blood test results should be labelled as a diabetes review in the circumstances.

The panel took account of Ms 4's evidence. She confirmed that a diabetic review of Patient F could not have taken place at the time stated in the medical records as it had occurred on 6 March 2016 which was a Sunday and the Surgery was closed. Ms 4 conceded that a detailed diabetic review entry had taken place on the morning of Monday 7 March 2016, the following day. During cross-examination of the witness, Miss Pexton asserted that she had "checked the tick box" relating to diabetic review when filing blood results.

The panel determined that the medical records state that Patient F had been subject to a diabetic dietary review on 6 March 2016 when, in fact, they had not. The panel therefore found the charge proved.

Charge 11

11) Your conduct at charge 10 above was dishonest in that you knew that a diabetic review had not taken place and/or the entry in the records was inaccurate and misleading;

This charge is found NOT proved.

In making this decision, the panel again had regard to the legal assessor's advice in relation to the case of Ivey v Genting (UK) Ltd t/a Crockfords [2017] UKSC 67 and the principles behind it.

The panel first took into account Miss Pexton's thinking in relation to all of the allegations included in the charge. It was clear that Miss Pexton had been filing the bloods of Patient F and that her system for doing so included her ticking the box to state that a dietary review had taken place. The panel decided that Miss Pexton had not meant to mislead anyone in her actions at this time and that she was simply undertaking the task of filing bloods having ticked the diabetic review checkbox erroneously going by her understanding best practice.

The panel went on to consider how ordinary decent people may consider Miss Pexton's actions at charge 11. It took the view that it was apparent that Miss Pexton had an established process in place and that she considered filing bloods to be part of the diabetic review of a patient.

In conclusion, the panel determined that Miss Pexton, in her actions at charge 10, although inaccurate, had no intention to mislead anyone involved and had no dishonest motive. The panel therefore found the charge not proved.

Charge 16

16) On or around 2 March 2016 and having been instructed to process only “normal” and/or diabetes-related pathology results processed all pathology reports, including those which were abnormal;

This charge is found proved.

The panel took account of the email from Mr 3 to Ms 5 dated 19 April 2016 relating to Miss Pexton’s actions on 2 March 2016. He explained that the instruction given to her had been to file the normal reports and also those relating to diabetes and leave the rest “for the management of other clinicians”

He went on to explain:

“I came in the next morning to find the report box empty. Kaye informed me that she had decided to process all results as she felt that they had been sitting too long. Kaye also felt that the practice’s existing protocol for managing abnormal results could be improved and acted on these results in line with her views in respect of their best management. The current process is that an action plan is identified for abnormal results and this is communicated to and actioned by the reception team. Kaye felt that many did not need this and could await a call from the patient for further tests to be organised.”

The panel also had regard to Mr 3’s NMC witness statement and oral evidence during which he said:

“Once Ms Pexton became aware of the concerns regarding the additional work she had carried out, she was apologetic and came to appreciate that she should not have processed the further results.”

The panel recognised that Mr 3’s evidence was clear and clarified that Miss Pexton had eventually recognised that her actions were not what she had been asked to do and apologised to Mr 3 when she acknowledged that she had not acted in accordance with his instructions. On this basis, the panel found the charge proved.

Charge 17a

17) Your conduct at charge 16 above was:

- a) inappropriate;

This charge is found proved.

The panel took account of what Miss Pexton had been asked to do by Mr 3. In his statement Mr 3 said that:

“The processing of ‘normal’ results is very simple. Indeed, when I started at One Medical Group, these results were filed by a receptionist. They do not need any clinical action at all. By the time of this incident, in March 2016, it was company practice for a clinician to file these results, but it is a straightforward task.”

The panel took account of the fact that Miss Pexton was the lead in various areas of nursing care including diabetes and sexual health. It considered that she would be asked to process only the normal and/or diabetes related pathological results. The panel had regard to the fact that Miss Pexton may have believed that it was within her capabilities to process all of the results, this was not what she had been instructed to do. Indeed, she apologised to Mr 3 when the impact of her activity, in excess of 100 results that were not properly actioned, was raised with her.

The panel therefore determined that it was inappropriate for Miss Pexton to have processed all of the results and found the charge proved.

Charge 17b

17) Your conduct at charge 16 above was:

- b) outside of the scope of your competence

This charge is found not proved.

In evidence, Mr 3 raised concerns that Miss Pexton had gone out of the scope of her practice in respect of this piece of work as well as outside of the existing practice policy.

Despite the significant volume of abnormal blood results that had been filed by Miss Pexton, the panel determined that this was not a case of incompetence on her part, but was outwith the role that she had been instructed to perform.

There was no evidence before the panel that Miss Pexton was not competent to perform this activity. The evidence before it was that she had acted outside of her role within the Surgery and the instructions given to her by her clinical lead.

The panel therefore concluded that the NMC had not discharged the burden of proof in relation to this charge. The panel therefore found the charge not proved.

The hearing resumed on 3 June 2019

Ms Ryder informed the panel that Ms Pexton was not in attendance either in person or via video link. She submitted that notice of the resuming hearing had been sent to Ms Pexton's registered address on the WISER system on 28 March 2019 and that it had been received and signed for by Ms Pexton on 29 March 2019. Further, Ms Ryder submitted that Ms Pexton had been provided with transcripts from all previous hearings.

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

Having accepted that service had been effective, the panel went on to hear submissions from Ms Ryder in relation to proceeding in the absence of Ms Pexton. She submitted that this is the fourth listing of this case and that a conclusion to proceedings is in both the NMC and Ms Pexton's own interests. Ms Ryder referred to documentation from Ms Pexton as included in the proceeding in absence bundle and submitted that it is apparent that proceedings are affecting Ms Pexton's health. Ms Ryder referred the panel to the telephone log dated 30 May 2019 and submitted that any attempt to request that Ms Pexton's re-engages in the hearing may not be successful.

The panel accepted the advice of the legal assessor.

The panel decided to proceed in the absence of Ms Pexton. It was of the view that it is apparent that NMC proceedings are having an effect on Ms Pexton's mental health and that an expeditious disposal of the case is in the interests of all parties. The panel had regard to the fact that Ms Pexton has previously engaged and was not happy with the panel's findings at the facts stage. Further, the panel noted that there has been no application to adjourn and that Ms Pexton has been offered the chance to attend via video link. The panel therefore determined that it was in the interests of fairness that the hearing should proceed in the absence of Ms Pexton.

The panel has drawn no adverse inference from the non-attendance of Ms Pexton.

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 Ms Pexton's fitness to practise is currently impaired. There is no statutory definition of fitness to practise. However, the NMC has defined fitness to practise as a registrant's suitability to remain on the register unrestricted.

Ms Ryder provided written submissions to the panel. In relation to misconduct, the submissions stated:

“The starting point for the panel is the definition of misconduct given by Lord Clyde in Roylance v General Medical Council (No 2) [2000] 1 AC 311. Lord Clyde framed the meaning of misconduct in the following way:

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

The description of misconduct in Roylance was expanded upon by Auld LJ in Meadow v General Medical Council [2006] EWCA Civ 1390 (para 200 of the judgment):

“‘Serious professional misconduct’ is not statutorily defined and is not capable of precise description or delimitation. It may include not only misconduct by a doctor in his clinical practice, but misconduct in the

exercise, or professed exercise, of his medical calling in other contexts, such as that here in giving of expert medical evidence before a court. As Lord Clyde might have encapsulated his discussion of the matter in Roylance v Clyde, it must be linked to the practice of medicine or conduct that otherwise brings the profession into disrepute, and it must be serious. As to seriousness, Collins J, in Nandi v General Medical Council [2004] EWHC rightly emphasised, at paragraph 31 of his judgement, the need to give it proper weight, observing that in other contexts it has been referred to as ‘conduct which would be regarded as deplorable by fellow practitioners.’”

‘Falling short of what would be proper in the circumstances’ of this case as per Roylance may be determined with reference to the NMC Code of Conduct, Professional standards of practice and behaviour for nurses and midwives, effective from 31 March 2015.

...

It is accepted that not every breach of the Code automatically results in a finding of misconduct. However the Council submits that the Registrant’s conduct fell far short of the standards expected of a registered nurse in the following areas, namely:

- a) Maintaining accurate records in patient notes
- b) Recording rationales to back up clinical decisions
- c) The importance of ensuring patients are consulted in decisions which have the potential to impact on their future care
- d) Communication with colleagues/being able to follow instructions from seniors
- e) Working within the parameters of designated role
- f) Honesty and integrity

...

It is submitted that looking at the charges individually, in their own right they are sufficiently serious to amount to misconduct but also when the charges are viewed collectively, they reveal a pattern of behaviour and repetitive misconduct which falls seriously short of the conduct and standards expected of a nurse.

The Council does however concede, notwithstanding the submission made at paragraph 14 above, that the conduct alleged at charge 10 does not amount to serious professional misconduct. On the Committee's findings, the Registrant's inaccurate recording of a 'Type II diabetic review' in Patient F's notes was a consequence of her ticking the diabetic review checkbox to show she was in the notes/reviewing blood results, believing that to be best practice. It is submitted that this erroneous 'box ticking' which although incorrect practice (she should have just filed the Hba1c results without marking it as a diabetic review) is unlikely to amount to seriously deficient record keeping which would be considered deplorable by fellow practitioners. Ms [1's] comments are highlighted to the Committee at paragraph 32 of her witness statement: "This was not an area in which she was clinically trained and so it might have been a genuine error."

Ms Ryder also made written submissions in relation to impairment in which she referred to the matters of insight, remediation and the questions outlined by Dame Janet Smith in the 5th Shipman Report (as endorsed in the case of Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant [2011] EWHC 927 (Admin)). In relation to Grant, Ms Ryder submitted:

"It is submitted that limb 1 of Grant is engaged. The Council does not suggest that any patients came to any actual harm as a result of the Registrant's conduct. Rather that the Registrant's unilateral decisions to decline and exempt patients

based on their non-attendance and/or believing they were unsuitable for foot pulses (despite it being contrary to the practice of the surgery and contrary to the NHS's exception guidance) had the potential to place the patients at unwarranted risk of harm. The Committee heard evidence at the facts stage of these proceedings that exempting patients from clinical indicators could have had a detrimental impact on a patient's health and/or future care planning/reviews in that they would be removed from the QOF. Although the Registrant asserted in her evidence that the QOF would renew in the next financial year, it is submitted that this is a moot point in that Ms [1] confirmed even if the QOF did renew in the next financial year, the decision to exempt the patient would stay on the records for the life of the patient. More pertinently, any decision to exempt patients should not be driven by statistics but made following consultation with the patient whereby they made a fully informed choice about their future care. A failure to complete effective notes and record information accurately had the potential to impede the effective provision of continuous care for Patients A, B and C.

If the Committee find misconduct in respect of charge 7b i) and/or ii), Patient D clearly did not come to any harm as a result of not having his blood pressure taken and recorded, though as Ms [1] indicated, the failure to undertake this part of the hypertension assessment was an omission of care in that the patient was there for that very purpose – to have his blood pressure reviewed. If for example blood pressure was out of range but a reading had not been taken, this could have impacted on their medication and treatment.

In respect of charge 17, Mr [3] explained that in excess of 100 results not properly actioned by the Registrant had to be revisited and rectified by contacting the patients to arrange further appointments. Although the Council does not suggest any patients came to any harm as a result of the incorrect filing and Mr [3] contended he believed the Registrant was genuinely trying to be helpful, nonetheless a not insignificant number of patients' results had not been actioned and had to be contacted to arrange follow-up appointments. This could have led

to those patients not being seen for some time and a deterioration of their condition.

In respect of limbs 2 and 3, it is submitted that the Registrant has brought the profession into disrepute and breached fundamental tenets of the profession. The Council would rely on the aforementioned breaches of the Code of Conduct to substantiate that. The public rightly expects that nurses will be safe and competent practitioners. Whilst no doubt, the public would accept that nurses do makes mistakes from time to time, it is submitted that in a case such as this, where the Registrant's practice has fallen significantly short of minimum standards of safe practice and on the Committee's findings were dishonestly motivated, the nursing profession has been brought into disrepute.

In respect of limb 4, on the Committee's finding, the Registrant did act dishonesty. Her conduct breached her duty to be open and honest, to act with complete integrity and uphold the reputation of the nursing profession. The Council contends that instead of thinking about patient needs and safety first, she was driven by targets. This self-interest undermines trust members of the public place in the nursing profession, to put patients first. It is also submitted, for the reasons advanced below in the section titled 'Remediation' that the Registrant's professional integrity cannot be relied upon and she is liable to act dishonestly again in the future."

In relation to remediation, Ms Ryder's written submissions directed the panel to the case of Cohen v General Medical Council [2008] EWHC 581. The submissions stated:

" It is submitted that there is no evidence before the Committee that the areas of concern have been remediated. As part of the Registrant's bundle (**exhibit 3**), she provided evidence of training dating back to 2016 in the areas of 'The theory of chromatography', 'Prenatal diagnosis' 'Gas Chromatography and Mass Spectroscopy', 'Principles of Capillary Electrophoresis', 'Organic Gas Disorders'

and 'Pathology'. Only the latter module could be considered to be of some relevance, albeit it is noted that the certificate indicates the module is 'incomplete'. She has also provided evidence of competency sign offs from Dr 5 and blood training. The persuasive weight of these documents is considered by the Council to be low, given that there is no evidence of direct remediation to the areas of concern, nor has the Committee considered any positive testimonials as to the standard of the Registrant's competency as of today and/or character."

In relation to insight the written submissions stated:

"The Council submits that there is no evidence that Ms Pexton has insight into her conduct. The Registrant in cross-examining witnesses, particularly Ms [1] and Ms [4], accused them of being liars and sought to attack their character. This concerns the Council, as instead of facing responsibility for the deficiencies in her own practice, she sought to blame others and went further in making cross-allegations against them, particularly Ms [1].

The Council has great concerns that the Registrant's focus was wholly on the 'I' and robustly asserted that there was nothing wrong with the way she went about her practice. It was clear from the way Ms Pexton put her case to the witnesses that she considered that her practice was without fault and her way of doing things was the right way. This was evidenced for example in maintaining that she had correctly exercised her clinical judgment in respect of the exemption decisions made for Patients A, B and C. This disposition to blame others rather than accept responsibility for her own practice, does point towards there being a high risk of reoccurrence and attitudinal issues.

There is also no evidence of the Registrant acknowledging how her conduct had the potential to impact on patient safety and undermine the reputation of the nursing profession.

Finally in respect of insight, the Registrant has sent in a number emails both before and after the decision on facts was handed down which were particularly abusive and vitriolic in content, particularly towards the NMC, the Committee and Ms [1]. Although it is conceded that these emails may have come about as a consequence of Ms Pexton's health (although this cannot be confirmed without a formal diagnosis), nonetheless to communicate with her regulator and the Committee in this way, does give additional support to there being underlying attitudinal concerns and an entrenched lack of insight."

The panel has accepted the advice of the legal assessor which included reference to a number of judgments which are relevant.

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, Ms Pexton's 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: Professional standards of practice and behaviour for nurses and midwives (2015) ("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 was of the view that Ms Pexton's actions did fall significantly short of the standards expected of a registered nurse, and that your actions amounted to a breach of the Code. Specifically:

Prioritise people

- 1.2 make sure you deliver the fundamentals of care effectively
- 1.3 avoid making assumptions and recognise diversity and individual choice
- 2.1 work in partnership with people to make sure you deliver care effectively
- 2.2 recognise and respect the contribution that people can make to their own health and wellbeing
- 2.3 encourage and empower people to share decisions about their treatment and care
- 2.4 respect the level to which people receiving care want to be involved in decisions about their own health, wellbeing and care
- 4.2 make sure that you get properly informed consent and document it before carrying out any action

Practise effectively

- 8.5 work with colleagues to evaluate the quality of your work and that of the team
- 8.5 work with colleagues to preserve the safety of those receiving care
- 10.3 complete all records accurately and without any falsification

Promote professionalism and trust

- 20.1 keep to and uphold the standards and values set out in the Code
- 20.2 act with honesty and integrity at all times

The panel appreciated that breaches of the Code do not automatically result in a finding of misconduct. However, the panel was of the view that Ms Pexton's actions showed a pattern of behaviour that had potential to put the patients in her care at great risk of harm. It considered that Ms Pexton's actions showed attitudinal issues that demonstrated her inability to grasp what she should and shouldn't have done in relation to patient care and the lengths that she felt that she needed to, unnecessarily, go to.

The panel considered that Ms Pexton's explanations of her actions lacked plausibility and revealed a collective pattern that was very concerning.

The only charge that the panel considered not to be worthy of a finding of misconduct was that at charge 10. It was of the view that charge 10 simply amounted to a box ticking error and did not pass the threshold required for a finding of misconduct.

The panel found that Ms Pexton's actions, overall, 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, Ms Pexton's 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 and to maintain professional boundaries. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. To justify that trust, nurses must be honest and open and act with integrity. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession. In this regard the panel considered the 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.

The panel finds that Ms Pexton's behaviour engaged all four limbs of the Grant judgment. It is apparent that Ms Pexton's actions put the patients in her care at risk of harm and that, in this, she brought the profession into disrepute. In doing so, Ms Pexton's behaviour breached a fundamental tenet of the nursing profession. Further, the panel had found Ms Pexton's actions had amounted to dishonesty. The panel recognised that Ms Pexton's motivation for doing what she did appears to have been an attempt to meet targets. However, it was of the view that she had acted inappropriately when making these attempts. This included falsifying records and undertaking filing of blood test results which was outside of the remit of what Ms Pexton had been asked to do.

The panel took account of the correspondence from Ms Pexton that had been provided to it and took the view that she had not demonstrated any insight whatsoever into her failings. The panel noted that Ms Pexton had acted in a dishonest way which had been self-serving and had failed to acknowledge any wrongdoing.

The panel was of the view that the email correspondence from Ms Pexton was particularly concerning and failed to show any kind of respect to the NMC as her regulator or the panel as an independent body.

The panel noted that Ms Pexton has not worked as a Registered Nurse for some time and that there had been no remediation of her misconduct. It noted that Ms Pexton does not wish to return to nursing practice at this time.

The panel is of the view that there is a risk of repetition based on the complete lack of insight and remediation. 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. The panel determined that, in this case, a finding of impairment on public interest grounds was required. It had particular regard to the communication from Ms Pexton to the NMC and was of the view that it would be considered to be an extremely disrespectful way to communicate with your regulator. The panel was of the view that the lack of decorum would not be in keeping with that required of a Registered Nurse especially after the charges that had been found proved.

Having regard to all of the above, the panel was satisfied that Ms Pexton's 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 Ms Pexton off the register. The effect of this order is that the NMC register will show that Ms Pexton has been struck-off the register.

In reaching this decision, the panel has had regard to all the evidence that has been adduced in this case. 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 Ryder submitted that the NMC’s sanction bid in relation to Ms Pexton was that of a 12 month suspension order although the panel may consider a striking off order more appropriate having had regard to the way that the case has progressed. Ms Ryder outlined what the NMC perceive the aggravating and mitigating circumstances of the case to be and also referred the panel to the section of the sanctions guidance entitled “Considering sanctions for serious cases” and within that “Cases involving dishonesty”.

The panel had regard to the section of the SG entitled “Cases involving dishonesty” and was of the view that the following parts were applicable:

- misuse of power
- vulnerable victims
- direct risk to patients
- premeditated, systematic or...deception

The panel was of the view that although the dishonesty was not at the highest level and there was no personal financial gain, there was a self-aggrandising gain which would have led to Ms Pexton's credibility and status at work being raised if the dishonesty had gone undetected. The panel took account of the fact that Ms Pexton's dishonesty flagrantly put patients in her care at risk of harm and involved her falsifying records with little chance of exposure. Further, the panel noted that Ms Pexton scoffed during the hearing when it was suggested that her dishonesty had put patients at risk of harm and took the view that she had been cavalier in her actions.

The panel considered the following to be aggravating factors in the case:

- Ms Pexton has shown no insight whatsoever into her failings;
- Ms Pexton has demonstrated deep seated attitudinal issues;
- Ms Pexton's conduct put patients at a risk of harm;
- Ms Pexton has shown no evidence of remediation;
- Ms Pexton's correspondence with the NMC has shown a complete lack of respect towards her regulator and a lack of professionalism.

The panel considered the following to be mitigating factors in the case:

- (PRIVATE)
- The panel heard evidence that the workplace was very busy. However, the panel considered that the overriding duty of a Registered Nurse is to ensure that no harm or risk of harm came to patients under their care and therefore little weight could be placed on this factor;
- (PRIVATE)

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

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 Ms Pexton's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Ms Pexton's 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 the SG, in particular:

- no evidence of harmful deep-seated personality or attitudinal problems
- identifiable areas of the nurse or midwife's practice in need of assessment and/or retraining
- no evidence of general incompetence
- potential and willingness to respond positively to retraining
- patients will not be put in danger either directly or indirectly as a result of the conditions
- the conditions will protect patients during the period they are in force
- conditions can be created that can be monitored and assessed.

The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. It took account of the fact that Ms Pexton has stated that she has no plan to return to nursing and in light of this would not be willing to practise under conditions. Further, the panel took account of the fact that it had found Ms Pexton to have deep seated attitudinal issues which had become more apparent following her lack of acceptance of the panel's findings. The panel also recognised that there were no appropriate conditions that would address the dishonesty found against Ms Pexton.

Furthermore the panel concluded that the placing of conditions on Ms Pexton's registration would not adequately address the seriousness of this case and would not protect the public or satisfy the public interest.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG indicates that a suspension order would be appropriate where (but not limited to):

- single instance of misconduct but where a lesser sanction is not sufficient
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since the incident
- the Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour

The conduct, as highlighted by the facts found proved, was a significant departure from the standards expected of a registered nurse and the panel took account of the fact that it had determined that Ms Pexton had demonstrated no insight whatsoever. Ms Pexton appears to continue to refuse to accept any wrongdoing in her actions. Further, the panel took account of the fact that although there had not been repetition of the

misconduct as such, the incidents had not been isolated and had taken place within a short period of time. The panel noted that the serious breach of the fundamental tenets of the profession evidenced by Ms Pexton's actions is fundamentally incompatible with her remaining on the register.

In this particular case, the panel determined that a suspension order would not be a sufficient, appropriate or proportionate sanction.

Finally, in considering a striking-off order, the panel took note of the following from the SG:

- Do the regulatory concerns about the nurse or midwife raise fundamental questions about their professionalism?
- Can public confidence in nurses and midwives be maintained if the nurse or midwife is not removed from the register?
- Is striking-off the only sanction which will be sufficient to protect patients, members of the public, or maintain professional standards?

The panel determined that Ms Pexton's actions were significant departures from the standards expected of a registered nurse, and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Ms Pexton's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body.

The panel determined that a striking off order was appropriate because:

- Ms Pexton's actions put patients at the risk of significant harm;
- Ms Pexton has demonstrated deep seated attitudinal problems in both her actions and during the regulatory proceedings;

- during the investigatory process and during these proceedings, Ms Pexton showed no insight into the process;
- Ms Pexton has shown no sign of remediating her failings and as such, the panel consider there to be a high risk of repetition of her actions;
- There is no evidence of reflection or character testimony before the panel.

Further, the panel was of the view that Ms Pexton's communication with the NMC, as her regulator, was inappropriate, unprofessional and not in keeping with the values as set out in the Code.

Balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order. Having regard to the matters it identified, in particular the effect of Ms Pexton's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered nurse should conduct herself, the panel has concluded that nothing short of this would be sufficient in this case.

The panel considered that this order was necessary to mark the importance of maintaining public confidence in the profession, and to send to the public and the profession a clear message about the standard of behaviour required of a registered nurse.

Determination on Interim Order

The panel has considered the submissions made by Ms Ryder 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 accepted the advice of the legal assessor.

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.

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

That concludes this determination.