

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

**Substantive Hearing
15 - 21 December 2022**

Virtual Hearing

Name of registrant: David Keith Woodall

NMC PIN: 01D0143E

Part(s) of the register: Registered Nurse
Mental Health Nursing (level 1) – September 2004

Relevant Location: Essex

Type of case: Misconduct

Panel members: Phil Lowe (Chair, Lay member)
Carol Porteous (Registrant member)
Isobel Leaviss (Lay member)

Legal Assessor: Cyrus Katrak

Hearings Coordinator: Chantel Akintunde
Tyrena Agyemang (21 December 2022)

Nursing and Midwifery Council: Represented by Unyime Davies, Case Presenter

Mr Woodall: Not present and unrepresented at the hearing

Facts proved by admission: Charges 2 and 5

Facts proved: Charges 1(a), 1(b), 3, 6 and 7

Facts not proved: Charges 4(a) and 4(b)

Fitness to practise: Impaired

Sanction: **Conditions of practice order (18 months) with a review**

Interim order: **Interim conditions of practice order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mr Woodall was not in attendance and that the Notice of Hearing letter had been sent to Mr Woodall's registered email address by secure email on 16 November 2022. The panel had regard to the email evidence and the signed witness statement from an NMC case officer confirming this.

Ms Davies, on behalf of the Nursing and Midwifery Council (NMC), submitted that it had complied with the requirements of Rules 11 and 34 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (the Rules).

The panel accepted the advice of the legal assessor.

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

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

Decision and reasons on proceeding in the absence of Mr Woodall

The panel next considered whether it should proceed in the absence of Mr Woodall. It had regard to Rule 21 and heard the submissions of Ms Davies who invited the panel to continue in the absence of Mr Woodall.

Ms Davies referred to the cases of *R v Jones (Anthony William)* (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162.

Ms Davies referred the panel to the email from Mr Woodall dated 13 February 2022 and 4 December 2022 where he stated the following:

“No, I don't think that I want to be involved in this investigation anymore. It is very stressful. It takes up a great deal of my time and energy. I am always very busy anyway. I responded, and I gave a detailed answer to these allegations over a year ago anyway...”

“Yes, I received the notice you sent me [...] NO, there is no way that I am attending the HEARING on the 15th December. I have completed the form in quite a lot of detail, I have absolutely had enough of this whole process...”

Ms Davies then referred to the Case management Form (CMF) dated 4 December 2022 and completed by Mr Woodall, where he indicated that he will not be attending this hearing, and that he is happy for the hearing to proceed in his absence. She noted that Mr Woodall also stated the following within the form:

“It is too stressful, and I have absolutely had enough of this whole process. I feel like a criminal. I definitely do NOT want to have to listen to people discussing me for five days...”

“But anyway, I have decided for this HEARING to go ahead; (not that I will be attending). Nor will I have any legal representation – only what I have written here, and previously in my defence...”

Ms Davies submitted that Mr Woodall has made it clear in his correspondence with the NMC that he does not wish to attend this hearing, thereby voluntarily absenting himself. She noted that Mr Woodall has provided a full and detailed response to each of the charges for the panel to consider in his absence.

Ms Davies submitted that it will not be in the interest of justice if the panel were to adjourn this hearing, but rather, it would be fair and proportionate for the panel to proceed in Mr Woodall's absence.

The panel accepted the advice of the legal assessor.

The panel noted that its discretionary power to proceed in the absence of a registrant under the provisions of Rule 21 is not absolute and is one that should be exercised '*with the utmost care and caution*' as referred to in the case of *R v Jones (Anthony William)*.

The panel has decided to proceed in the absence of Mr Woodall. In reaching this decision, the panel has considered the submissions of Ms Davies, the emails and representations from Mr Woodall, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones* and *General Medical Council v Adeogba* and had regard to the overall interests of justice and fairness to all parties. It noted that:

- No application for an adjournment has been made by Mr Woodall;
- Mr Woodall has informed the NMC that he has received the Notice of Hearing, that he does not wish to attend the hearing, and has indicated that he is happy for the hearing to proceed in his absence;
- There is no reason to suppose that adjourning would secure his attendance at some future date;
- Four witnesses have been confirmed to give live evidence;
- Not proceeding may inconvenience the witnesses, their employer(s) and, for those involved in clinical practice, the clients who need their professional services;
- The charges relate to events that occurred in 2018 and 2019;
- Further delay may have an adverse effect on the ability of witnesses accurately to recall events; and
- There is a strong public interest in the expeditious disposal of the case.

By not appearing, there is some disadvantage to Mr Woodall in proceeding in his absence. Although the evidence upon which the NMC relies will have been sent to him at his registered address. He will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on his own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact

that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the limited disadvantage is the consequence of Mr Woodall's decisions to absent himself from the hearing and waive his rights to attend, and/or be represented.

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

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

At the outset of the hearing, Ms Davies made a request that this case be held wholly in private on the basis that proper exploration of Mr Woodall's case involves extensive reference to his health. The application was made pursuant to Rule 19 of the 'Nursing and Midwifery Council (Fitness to Practise) Rules 2004', as amended (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.

Having heard that there will unavoidably be references to Mr Woodall's health throughout this case, the panel determined to hold the entirety of the hearing in private in order to maintain his privacy.

Details of charges as amended

That you, a registered nurse,

1. *On 21 October 2018,*
 - a. *Administered patient medication from the second half of the MAR chart instead of starting from the top down, resulting in medication being omitted*

- b. Began to prepare medication for a patient who had not yet arrived*
- 2. On 28 October 2018, did not respond to an alarm*
- 3. On 29 October 2018, did not handover information from the earlier shift*
- 4. On 5 April 2019,*
 - a. Dispensed medication without being supervised*
 - b. Did not complete a care plan as directed*
- 5. On 23 June 2019, did not know how to correctly dispense the required volume of liquid medication until prompted*
- 6. On 28 June 2019, wanted to administer lorazepam to a patient without attempting verbal de-escalation*
- 7. On a date unknown, left a razor on the stable door shelf where patients could have accessed it*

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

Background

The charges arose whilst Mr Woodall was employed as a registered Band 5 Staff Nurse within the lower secure forensic unit at Edward House, which is part of South Essex Partnership NHS Trust (the Trust). During his employment, concerns were raised with regard to several incidents which related to mistakes with medication; failing to understand protocols in responding to incidents (particularly with handling situations involving aggressive patients); failing to respond to orders from senior colleagues; and an inability to cope with pressure.

On 21 October 2018, it was alleged that whilst under supervision, Mr Woodall administered patient medication from the second half of the MAR chart instead of starting from the top down, resulting in medication being omitted. At this time, Mr Woodall was put on a probationary performance improvement plan.

On 28 October 2018, it was alleged that Mr Woodall did not respond to an alarm bell. When questioned about this several days later, Mr Woodall claimed that, as he was on supernumerary, he assumed he did not need to respond to such alarms. The next day on 29 October 2018, it was further alleged that Mr Woodall did not handover information from an earlier shift to a colleague.

On 5 April 2019, it was alleged that Mr Woodall dispensed medication without being supervised, and did not complete a care plan as instructed by his supervisor.

On 29 May 2019, a probationary meeting was held with Mr Woodall to discuss the concerns raised with regard to his progress, [PRIVATE], his inability to multitask, and the completion of his preceptorship.

On 23 June 2019, it was further alleged that Mr Woodall did not appear to understand how to correctly dispense the correct volume of liquid medication using the medication bottle, syringe and measuring cup. It was not until Mr Woodall was prompted that he used the correct approach and dispensed the correct volume.

On 28 June 2019, it was alleged that Mr Woodall failed to support a colleague in responding to an incident with an aggressive patient. When he discovered the incident, he chose to return back to the office rather than help de-escalate the situation. Later that day, it is also alleged that Mr Woodall wanted to administer lorazepam to an aggressive patient, rather than attempt to verbally de-escalate the situation in accordance with standard practice.

It was further alleged that on an unknown date, Mr Woodall, whilst attending to a patient, left a razor on the stable door shelf where patients could have access to it.

Decision and reasons on application to admit hearsay evidence

The panel heard an application made by Ms Davies under Rule 31 to allow the hearsay evidence of Witness 4, along with her supporting exhibits, to be admitted into evidence. Witness 4 was not present at this hearing and, whilst the NMC had made sufficient efforts to ensure that this witness was present, she was unable to attend [PRIVATE].

Ms Davies referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin), specifically, the guidance outlined when considering whether to admit hearsay evidence:

1. *“Whether the statements were the sole and decisive evidence in support of the charges;*
2. *The nature and extent of the challenge to the contents of the statements;*
3. *Whether there was any suggestion that the witnesses had reasons to fabricate their allegations;*
4. *The seriousness of the charge, taking into account the impact which adverse findings might have on N [Woodall]’s career;*
5. *Whether there was a good reason for the non-attendance of the witnesses;*
6. *Whether the Respondent [NMC] had taken reasonable steps to secure the attendance of the witness;*
7. *The fact that N [Mr Woodall] did not have prior notice that the witness statements were to be read.”*

In relation to point 1 above, Ms Davies submitted that Witness 4's evidence is not the sole or decisive evidence to any of the charges, but rather, it relates to the reporting of the allegations and the background context of the case. She submitted that the panel have already heard live evidence from Witness 2 and Witness 3 in respect of Witness 4's written statement.

In relation to point 2, Ms Davies submitted that there is a clear difference in opinion between Mr Woodall and Witness 4 in respect of the alleged issues around Mr Woodall's progress and performance during his employment at the Trust.

In relation to point 3, Ms Davies submitted that Mr Woodall makes claims in his responses to the charges of Witness 4 having a personal vendetta against him, the reason for which is unclear.

In relation to point 4, Ms Davies submitted that the charges against Mr Woodall are serious as it relates to his clinical practice and performance, which could impact on his ability to continue his nursing practice in the future.

In relation to point 5, Ms Davies submitted that Witness 4 has advised that the reason for her non-attendance [PRIVATE].

In relation to point 6, Ms Davies submitted that the NMC have been in regular contact with Witness 4 and have made several attempts to secure her attendance, which can be evidenced should the panel wish to have sight of this.

In relation to point 7, Ms Davies submitted that whilst Mr Woodall would not have received prior notice of Witness 4's statement being read out during this hearing, he has voluntarily absented himself from this hearing, which in turn suggests that he does not wish to cross examine Witness 4's evidence.

Ms Davies submitted that should the panel wish to hear live evidence from Witness 4, they have the option of adjourning this hearing in order to secure her attendance, but that her instructions were not to make an application for an adjournment on behalf of the

NMC. However, Ms Davies submitted that the NMC make this application to admit Witness 4's evidence should the panel not decide to adjourn for Witness 4 to attend to give their live evidence at a later date.

The panel heard from the legal assessor who advised that, under Rule 24 of the Order, both the NMC and Mr Woodall have the opportunity to call further witnesses if required relating solely to the issue of the registrant's impairment, following the conclusion of the facts stage.

In the preparation of this hearing, the NMC had indicated to Mr Woodall in the CMF dated 4 December 2022 that it was the NMC's intention for Witness 4 to provide live evidence to the panel. Despite knowledge of the nature of the evidence to be given by Witness 4, Mr Woodall made the decision not to attend this hearing. On this basis, Ms Davies advanced the argument that there was no lack of fairness to Mr Woodall in allowing Witness 4's statement and related exhibits into evidence.

The panel noted that because Mr Woodall has chosen not to attend this hearing, he was not aware at the time of making that decision of this application to have Witness 4's statement read into evidence.

The panel considered that Witness 4's evidence is not the sole and decisive evidence in proving any of the disputed charges, and was not directly relevant to the charges. Nevertheless, at this stage, the panel thought it could be relevant to hear in person from Witness 4 at the fitness to practise stage in light of the claims Mr Woodall makes against her.

The panel therefore determined that Witness 4's statement and related exhibits (with exception of the email from Witness 1 at Exhibit LD/06 which was also put to Witness 1 in live evidence) will be disregarded at the facts stage.

The panel considered that if Witness 4 was able to attend on Day 4 of the hearing, it may be of assistance to hear her live evidence and take this into account when making its decision at the misconduct and impairment stage. However, if Witness 4 is also not

available to attend on Day 4, it will then make its decision as to whether or not to admit her hearsay evidence and relevant exhibits.

Decision and reasons on application to amend the charge

During the facts stage, the panel heard an application made by Ms Davies on behalf of the NMC, to amend the wording of charge 6.

The proposed amendment was to correct an error in the drafting of charge 6 as follows:

6. *On ~~27~~ **28** June 2019, wanted to administer lorazepam to a patient without attempting verbal de-escalation*

Ms Davies submitted that, during Witness 1's live evidence, she was referred to Exhibit LD/06 and confirmed that the incident outlined in charge 6 actually occurred on the same day she sent this email, which was on 28 June 2019, not 27 June 2019.

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

The panel was of the view that such an amendment, as applied for, was in the interest of justice. The panel was satisfied that there would be no prejudice to Mr Woodall 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 accuracy.

Decision and reasons on facts

At the outset of the hearing, the panel had regard to the CMF completed by Mr Woodall, where he indicated that he admits to charges 1(a), 1(b), 2, 3, 4(a), 4(b), 5 and 7, and that his fitness to practice is impaired by way of misconduct. However, the panel were concerned that not all of Mr Woodall's admissions were unequivocal.

The panel heard from the legal assessor, who provided guidance on factors to take into account when considering whether it can be satisfied that a charge is found proved by way of admission.

Ms Davies acknowledged the panel's concerns with regard to the wording used by Mr Woodall in some of his admissions to the charges, such as "*This is probably true, but it is so long ago, that I cannot remember all the details*" or "*Again, this is probably true, but it is so long ago, that I cannot remember the details exactly.*" Nevertheless, Ms Davies submitted that it is a matter for the panel to consider whether it is satisfied with the admissions, and whether it can find the admitted charges proved in its entirety.

The panel accepted the advice of the legal assessor.

In relation to charges 1(a), 1(b), 3, 4(a), 4(b) and 7, the panel considered Mr Woodall's responses to the admitted charges alongside the information available before them in relation to these. It was not satisfied that it could safely find the charges proved solely by way of Mr Woodall's purported admission. It therefore determined that the burden should be on NMC to prove these charges on the basis of the evidence available in this case.

The panel therefore only finds charges 2 and 5 proved in their entirety, by way of Mr Woodall's admissions.

In reaching its decisions on the disputed facts, the panel took into account all the oral and documentary evidence in this case together with the submissions made by Ms Davies on behalf of the NMC and written representations by Mr Woodall (including his CMF and extensive emails sent to the NMC).

The panel has drawn no adverse inference from the non-attendance of Mr Woodall.

The panel was aware that the burden of proof rests on the NMC, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that a fact

will be proved if a panel is satisfied that it is more likely than not that the incident occurred as alleged.

The panel heard live evidence from the following witnesses called on behalf of the NMC:

- Witness 1: Deputy Ward Manager at Essex University Partnership NHS Trust
- Witness 2: Deputy Ward Manager at Essex University Partnership NHS Trust
- Witness 3: Charge Nurse at Essex University Partnership NHS Trust

In closing submissions, Ms Davies invited the panel to find Witness 1, Witness 2 and Witness 3 credible, and submitted that their credibility should not be diminished by their ability to recall details of the events that occurred in 2018 and 2019, which varied.

Ms Davies submitted that the panel have had regard not only to the live oral evidence of the witnesses, but also their detailed contemporaneous file notes and formalised written statements. She also submitted that there is nothing in any of the witnesses' oral testimony that contradicts what was written in their contemporaneous notes and statement, which is highly relevant in proving the charges

Ms Davies submitted that the panel may wish to also consider Mr Woodall's responses to the charges as detailed in the CMF in deciding whether this plays into proving the disputed charges, particularly where he states "*This is probably true...*" under some of his admissions to the charges (which were not accepted by the panel).

Ms Davies referred the panel to the '*evidence matrix*' document which outlines where each charge is supported by the live and documentary evidence available, and

proceeded to make submissions on this in detail. Overall, Ms Davies invited the panel to find all the disputed charges proved on the basis of the evidence before it.

Before making any findings on the facts, the panel heard and accepted the advice of the legal assessor. It considered the witness and documentary evidence provided by both the NMC and Mr Woodall.

The panel considered Witness 1, Witness 2 and Witness 3 to be credible and their evidence reliable. Whilst the witnesses were sometimes not able to fully recall details of the events that occurred due to the passage of time, the panel considered there was nothing to undermine the credibility of their evidence.

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

Charge 1(a)

*“On 21 October 2018,
Administered patient medication from the second half of the MAR chart
instead of starting from the top down, resulting in medication being
omitted.”*

This charge is found proved.

The panel noted that they did not have sight of the MAR chart referred to in the charge as this has not been made available as evidence. However, Witness 1 in her witness statement confirmed that she was present with Mr Woodall at the time of this incident in a supervisory capacity, and made a file note (Exhibit EP/02) of this.

The panel considered that Mr Woodall in his written responses to this charge confirmed that he was under the supervision of Witness 1 at the time of the incident. Mr Woodall in his responses also acknowledged this medication error as a mistake on his part.

In light of the above, the panel were satisfied that, on a balance of probabilities, Mr Woodall did administer patient medication from the second half of the MAR chart instead of starting from the top down, thereby resulting in medication being omitted on 21 October 2018.

The panel therefore found this charge proved in its entirety.

Charge 1(b)

*“On 21 October 2018,
Began to prepare medication for a patient who had not yet arrived”*

This charge is found proved.

The panel had regard to the file note (Exhibit EP/02) created by Witness 1 (and verified in her oral evidence) where she details the incident that took place as follows:

“...there were two patients left to be given their morning medication. Both patients had been prompted but neither had arrived. David stated "Shall we start administering [patient A's] medication?" I advised David that it is best to wait to see which of the two patients arrives first and explained the rationale for this [...] Another member of staff who had prompted both patients then returned to the clinic room and I asked what the progress was on the patients attending. The staff member advised that patient A was putting on their shoes and patient B was going to the toilet. I then carried on filling in a SAMs sheet for the last patient and when I looked up, David had started to administer patient A's medication. I asked David why he had started to do this as neither of them had yet arrived. David stated that it was because the other staff member had said that he was getting his shoes on. I advised David that it could still be possible that patient B arrives before patient A which (as suggested) did turn out to be the case...”

The panel also noted that Mr Woodall appeared to admit this charge in the CMF.

The panel were satisfied that, on a balance of probabilities, Mr Woodall did begin to prepare medication for a patient who had not yet arrived on 21 October 2018.

The panel therefore found this charge proved in its entirety.

Charge 3

“On 29 October 2018, did not handover information from the earlier shift”

This charge is found proved.

The panel had regard to Witness 1’s file note (Exhibit EP/02) (also verified in her oral evidence) where she stated the following:

“On 29 October 2018, both David was handing over East Wing and I the West Wing to the night staff. David only handed over information from his (late) shift. He shared no information from the early shift or any other significant information that has happened recently that the night staff might not have been aware of due to days off/bank workers etc...”

The panel were satisfied that, on a balance of probabilities, Mr Woodall did not handover information from the earlier shift on 29 October 2018.

The panel therefore found this charge proved in its entirety.

Charge 4(a)

*“On 5 April 2019,
Dispensed medication without being supervised”*

This charge is found NOT proved.

The panel had regard to Witness 2's written statement (also verified in his oral evidence), specifically paragraph eight where he stated:

"We were both in the clinical room where we would dispense medication. I had my back to him. As I turned around he was dispensing medication..."

The panel considered that it was not clear whether Mr Woodall's supervision with regard to medication management required him to be directly observed by a registered nurse, or just be in the same room as another registered nurse. The panel considered that the evidence available suggests that Mr Woodall was in fact supervised at the time as Witness 2 confirmed he was in the same room as Mr Woodall in a supervisory capacity.

In light of the above, the panel were not satisfied that, on a balance of probabilities, Mr Woodall dispensed medication without being supervised on 5 April 2019.

The panel therefore found this charge not proved.

Charge 4(b)

*"On 5 April 2019,
Did not complete a care plan as directed"*

This charge is found NOT proved.

The panel considered that the evidence is unclear as to whether or not Mr Woodall completed a care plan when told, or that he completed a care plan but not in the way that Witness 2 expected and/or instructed him to do. The panel had regard to Witness 2's file note (Exhibit SB/02) and his written statement, but did not have sight of the care plan in question. Overall, it did not consider that the evidence available was sufficient enough to support this charge. Furthermore, when questioned about this during his live evidence, Witness 2 was unable to recall whether Mr Woodall actually completed the care plan at the time.

In light of the above, the panel were not satisfied that, on a balance of probabilities, Mr Woodall did not complete a care plan as directed.

The panel therefore found this charge not proved.

Charge 6

“On 28 June 2019, wanted to administer lorazepam to a patient without attempting verbal de-escalation”

This charge is found proved.

Although not dealt with in her witness statement, Witness 1 gave oral evidence in relation to this charge.

The panel had regard to the email Witness 1 sent to senior management within the Trust on 28 June 2019 (Exhibit LD/06), which she confirmed in her live evidence was sent on the same day as when the incident occurred. In this email, Witness 1 detailed that Mr Woodall requested to administer lorazepam to an agitated patient who was making threats, but that she told him that verbal de-escalation measures should be used in the first instance. The panel also noted the following she stated in her email:

“I asked David whether he had attempted verbal de-escalation but he stated ‘no I didn’t want to risk it’ in case he[sic] escalated, he walked off so I didn’t think it was worth pursuing...”

The panel were satisfied that, on a balance of probabilities, Mr Woodall wanted to administer lorazepam to a patient without attempting verbal de-escalation on 28 June 2019.

The panel therefore found this charge proved in its entirety.

Charge 7

“On a date unknown, left a razor on the stable door shelf where patients could have accessed it”

This charge is found proved.

The panel had regard to Witness 1’s file note (Exhibit EP/01) and her written statement where she provides a description of the incident that occurred. Specifically, she stated the following within the file note:

“Whilst in the middle of administering medication, another patient asked us to put away his razor and shaving foam. I advised the patient that we were in the middle of medication and asked if he could wait until we had finished administering that particular patient's medication. David proceeded to go and take the shaving foam and razor off of the patient anyway so I advised him again to wait until we had finished administering this medication. The patient then walked away and David left the razor and the shaving foam on the stable door shelf where anyone could have taken it away. This was highlighted to David about the security breach as anyone else could have picked these up if the patient it belonged to didn't keep hold of it and wait as was requested.”

In response to the charge, Mr Woodall appeared to be stating that it was the patient who left the razor and shaving foam on the shelf, whilst acknowledging that he would have been responsible for collecting it.

The panel were satisfied that, on a balance of probabilities, and which ever version was correct, Mr Woodall left a razor on the stable door shelf where patients could have accessed it.

The panel therefore found this charge proved in its entirety.

Continuation of decision and reasons on application to admit hearsay evidence

On Day 4 of the hearing, Ms Davies informed the panel that Witness 4 has told the NMC that she is still unable to attend these proceedings to give her live evidence [PRIVATE].

Ms Davies submitted that the NMC's position in relation to this application remains the same, that is to admit Witness 4's statement and related exhibits into evidence.

The panel considered whether or not to adjourn proceedings of its own volition in the hope of securing the attendance of Witness 4. It had already determined that Witness 4's evidence was not relevant at the facts stage but that it might be relevant when considering misconduct and/or impairment as it addressed the contextual background. Witness 4's statement appeared to voice serious concerns about Mr Woodall, his attitude and the safety of his practice. Given its public protection role, the panel considered it would be important to at least consider this evidence and in an ideal world to question the witness. However, it was also mindful that this case dates back to 2018/19, that there is public interest in its expeditious disposal and that an adjournment would likely take several further months and may not result in her attendance in any event. The panel was also mindful that Mr Woodall appeared to want these matters resolved. The panel therefore decided not to adjourn proceedings.

The panel then gave the hearsay application in regard to Witness 4 serious consideration. The panel noted that Witness 4's statement had been prepared in anticipation of being used in these proceedings, and contained the following paragraph signed by her, *'This statement ... is true to the best of my information, knowledge and belief.'*

The panel considered whether Mr Woodall would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 4 to that of a hearsay testimony into evidence.

The panel considered that as Mr Woodall had been provided with a copy of Witness 4's statement and has chosen to voluntarily absent himself from these proceedings. There was also public interest in the issues being explored fully which supported the

admission of this evidence into the proceedings. The panel considered that the unfairness in this regard worked both ways in that the NMC was deprived, as was the panel, from reliance upon the live evidence of Witness 4 and the opportunity of questioning and probing that testimony. There was also public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In these circumstances, the panel decided that it would be relevant to accept into evidence the written statement and related exhibits of Witness 4 to be considered at the misconduct and impairment stage, but would give what it deemed appropriate weight once the panel had heard and evaluated all the evidence before it.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to serious misconduct and, if so, whether Mr Woodall'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.

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

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

Submissions on misconduct and impairment

Ms Davies invited the panel to take the view that the facts found proved amount to misconduct, and that Mr Woodall's fitness to practise is currently impaired.

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

Ms Davies referred the panel to '*The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates (2015, updated 2018)* (the Code) and submitted that Mr Woodall's proved conduct amount to breaches of the code.

Ms Davies referred to the case of *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Ms Davies submitted that the concerns raised in this case are wide ranging, and that the proved conduct fell seriously short of the standards expected of a registered nurse. She submitted that, if the panel are satisfied that the proved acts and omissions in this case amount to misconduct, it may move onto consider whether Mr Woodall's fitness to practise is impaired.

Ms Davies referred to the case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin) and outlined the test set out in its judgment. She submitted that parts (a), (b) and (c) of the test have been engaged, but that dishonesty was not a feature in this case.

Ms Davies submitted that the proved conduct in this case involve concerns around medication administration, failing to adhere to standard procedures and protocols, and leaving a razor in a place where vulnerable patients could access it. She submitted that whilst no actual harm was caused to patients, there was a risk of harm as a result of Mr Woodall's actions.

Ms Davies submitted that the panel had the benefit of live witness testimonies and documentary which provide context around the charges, which could assist when considering whether there is a finding of impairment.

Ms Davies referred to the case of *Cohen v General Medical Council* [2008] EWHC 581 (Admin).

Ms Davies submitted that the proved conduct in this case is remediable, and that Mr Woodall has shown some remorse for the matter. However, she submitted that Mr Woodall has shown a lack of insight and has provided no evidence of further training undertaken to address the concerns. Ms Davies understood that Mr Woodall is currently not working in a nursing capacity, and has provided no evidence to demonstrate his attempts at improving his practice. In light of this, Ms Davies submitted that the panel may find that there is a risk of repetition and a risk of serious harm to patients should Mr Woodall be allowed to continue his practise without restrictions.

Ms Davies reminded the panel of the need to protect the public and to uphold professional standards in the nursing profession. Ms Davies submitted that public confidence in the NMC as a regulator and in the nursing profession would be undermined if impairment was not found in this case.

Ms Davies therefore invited the panel to find that Mr Woodall's fitness to practise is currently impaired on the grounds of public protection and public interest.

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

Decision and reasons on misconduct

The panel had regard to the following sections of the Code.

6 Always practise in line with the best available evidence

To achieve this, you must:

6.1 *make sure that any information or advice given is evidence-based including information relating to using any health and care products or services*

6.2 *maintain the knowledge and skills you need for safe and effective practice*

8 Work co-operatively

To achieve this, you must:

8.1 *respect the skills, expertise and contributions of your colleagues, referring matters to them when appropriate*

8.3 *keep colleagues informed when you are sharing the care of individuals with other health and care professionals and staff*

8.5 *work with colleagues to preserve the safety of those receiving care*

13 Recognise and work within the limits of your competence

To achieve this, you must, as appropriate:

13.4 *take account of your own personal safety as well as the safety of people in your care*

15 Always offer help if an emergency arises in your practice setting or anywhere else

18 Advise on, prescribe, supply, dispense or administer medicines within the limits of your training and competence, the law, our guidance and other relevant policies, guidance and regulations

To achieve this, you must:

18.1 *prescribe, advise on, or provide medicines or treatment, including repeat prescriptions (only if you are suitably qualified) if you have enough knowledge of that person's health and are satisfied that the medicines or treatment serve that person's health needs*

The panel felt unable to give more than very limited weight to Witness 4 given that her evidence was hearsay and was not fully corroborated by a number of witnesses.

The panel also considered very carefully the written submissions provided by Mr Woodall.

The panel considered each charge separately in determining whether it amounted to serious misconduct.

In relation to charge 1(a), the panel considered that this incident happened whilst Mr Woodall was under supervision as part of his preceptorship. The panel was concerned that Mr Woodall had started administering medication from halfway down the MAR chart for two consecutive patients, despite his supervising colleague having advised against doing so after the first one. His supervisor identified that a medication had been omitted for the second patient. The panel determined that this was a 'near miss' and a breach of the Code (section 18) but did not consider that this mistake, taken in isolation, was serious enough to amount to serious misconduct.

In relation to charge 1(b), the panel noted that this incident happened whilst Mr Woodall was under supervision as part of his preceptorship. It was concerned that that Mr Woodall was instructed by his supervisor prior to this not to prepare the medication as the patient had not yet arrived, but yet he began preparations anyway. However, the panel acknowledged the fact that the medication was not actually dispensed to any patient. In the circumstances, it therefore did not consider that Mr Woodall's actions, taken in isolation, breached the Code or were serious enough to amount to serious misconduct.

In relation to charge 2, the panel accepted Mr Woodall's admission that he should have responded to the alarm. It considered his failure to respond to the alarm as a breach of the Code (section 15). The panel was concerned that Witness 2 had prompted Mr Woodall to respond but yet he had nevertheless not done so. In his contemporaneous file note, 31 October 2018, SB/01 Witness 2 stated that 'During his supervision the alarm bell sounded at which I got up from the chair I was sitting on saying to David 'we need to respond to this' as left the room to see what was happening'. However, the panel noted that this incident was very early in Mr Woodall's time on the unit, he had not

had TASI training and appeared not to understand that he should have responded. The panel considered that he should have responded but in the circumstances, did not consider his conduct in this particular instance to be so poor or serious enough as to amount to serious misconduct.

In relation to charge 3, the panel understood that it might have been best practice for staff to handover information from earlier shifts to colleagues, but did not consider that by only handing over information from his (late) shift, Mr Woodall's conduct breached the Code or was serious enough as to amount to serious misconduct.

The panel noted that the handover had been supervised at the time but this issue was not deemed serious enough to be flagged or addressed in the moment. In her contemporaneous file note EP/02, Witness 1 stated:

'On 29 October 2018, both David was handing over East Wing and I the West Wing to the night staff. David only handed over information from his (late) shift. He shared no information from the early shift or any other significant information that has happened recently that the night staff might not have been aware of due to days off/bank workers etc. This was highlighted to David's supervisor to address so as not to embarrass him in front of the handover.'

In relation to charge 5, the panel considered that this incident happened whilst Mr Woodall was under supervision as part of his preceptorship. It noted that Mr Woodall at the time was prompted by his supervisor to dispense the correct volume of medication, preventing an error from occurring. The panel took the view that had it not been for the intervention of his supervisor, this would have been a 'near miss' and a breach of the Code. The panel was concerned to see that in his Probationary Improvement Plan, this was apparently a repeat of a similar incident logged by Witness 1 on 6 June 2019 (LD/05) to which Mr Woodall had apparently responded *'I'll try to learn my lesson next time'*. The panel had regard to Mr Woodall's preceptorship workbook (Exhibit MH/01) which indicates that he had his competency signed off in this area of practice. In all the circumstances, the panel did not consider the charge found proved serious enough as to amount to serious misconduct in and of itself.

In relation to charge 6, the panel considered that this concerns Mr Woodall's apparent reluctance or lack of confidence to handle situations involving aggressive patients [PRIVATE] in line with standard protocol, which is to use de-escalation measures first before resorting to subduing patients with drugs. However, it took into account the fact that Mr Woodall did not actually go through with the drug administration after seeking advice from his supervisor. The panel therefore did not consider there to be any breach of the Code and/or was conduct serious enough as to amount to serious misconduct.

However, the panel was concerned that it had seen and heard evidence that Mr Woodall had wider and ongoing difficulties in assessing risk and gauging the most appropriate response to aggression, which was a particular challenge in this setting.

In relation to charge 7, the panel considered that leaving a razor in a place where patients could easily access it meant that his actions fell seriously below the standard to be expected especially in the context of the particular patients being cared for and did amount to serious misconduct. It also amounted to a breach of section 13.4 of the Code.

In reaching this conclusion the panel gave weight to the following extract from the contemporaneous file note dated 6 April 2019, EP/01:

Whilst in the middle of administering medication, another patient asked us to put away his razor and shaving foam. I advised the patient that we were in the middle of medication and asked if he could wait until we had finished administering that particular patient's medication. David proceeded to go and take the shaving foam and razor off of the patient anyway so I advised him again to wait until we had finished administering this medication. The patient then walked away and David left the razor and the shaving foam on the stable door shelf where anyone could have taken it away. This was highlighted to David about the security breach as anyone else could have picked these up if the patient it belonged to didn't keep hold of it and wait as was requested.

Notwithstanding the panel finding that one of the proven charges amounted to serious misconduct it went on to consider whether the charges collectively also would amount to serious misconduct. Given the number of wide-ranging charges proven, the breaches of the Code in totality, the time scale, and the concerns expressed above that Mr Woodall failed to follow advice and instructions from his supervisors on a number of occasions, (charges 1(a), 1(b), 2, 5 and 7) the panel did consider that collectively the proven charges also amounted to serious misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the serious misconduct, Mr Woodall'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. Patients and their families must be able to trust nurses with their lives and the lives of their loved ones. They must make sure that their conduct at all times justifies both their patients' and the public's trust in the profession.

In this regard, the panel considered the judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. In paragraph 74, she said:

'In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

In paragraph 76, Mrs Justice Cox referred to Dame Janet Smith's "test" which reads as follows:

'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her/ fitness to practise is impaired in the sense that S/He:

- a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d) ...*

The panel finds that patients were put at risk of physical harm as a result of Mr Woodall's misconduct. Mr Woodall's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. The panel therefore found that the first three parts of the test outlined above were met in this case.

The panel considered that Mr Woodall has shown limited insight into the matters based on his responses to the charges and the live testimonies. The panel considered there was a thread in the evidence that suggested that Mr Woodall on occasions blamed others, did not take on board advice from his supervisors and declined further training.

The panel has not received any information or evidence from Mr Woodall to demonstrate any steps he has taken to address the concerns and strengthen his practice since the allegations were referred to the NMC. It also noted that Mr Woodall is currently not working in a nursing capacity.

In light of this, the panel is of the view that there is a risk of the proved misconduct being repeated. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind that the overarching objectives of the NMC; to protect, promote and maintain the health, safety, and well-being of the public and patients, and to uphold and protect the wider public interest. This includes promoting and maintaining public confidence in the nursing and midwifery professions and upholding the proper professional standards for members of those professions.

The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case, thereby enabling Mr Woodall to practise unrestricted. The panel therefore also finds Mr Woodall's fitness to practise impaired on the grounds of public interest.

Having regard to all of the above, the panel was satisfied that Mr Woodall's fitness to practise is currently impaired.

Sanction

The panel has considered this case very carefully and has decided to make a conditions of practice order for a period of 12 months with a review. The effect of this order is that Mr Woodall's name on the NMC register will show that he is subject to a conditions of practice order and anyone who enquires about his registration will be informed of this order.

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

Submissions on sanction

Ms Davies informed the panel that in the Notice of Hearing, dated 16 November 2022, the NMC had advised Mr Woodall that it would seek the imposition of a 12 month conditions of practice order with a review, if it found Mr Woodall's fitness to practise currently impaired. She took the panel through the sanctions available to it and submitted that the most appropriate sanction, is a conditions of practice order for a period of 12 months with a review.

Ms Davies submitted that no further action and caution order do not adequately address the seriousness of the matters found proved. She submitted that the concerns are too serious for these sanctions to be imposed. She submitted that Mr Woodall's actions place patients at a significant risk of harm and the misconduct is not at the lower end of the spectrum. Ms Davies submitted that there is still risk to public protection due to Mr Woodall's lack of insight and remediation.

Ms Davies went on to address the imposition of a suspension or a striking-off order and submitted that these sanctions would be excessive as the concerns are not so serious to warrant temporary or permanent removal from the NMC register. She therefore invited the panel to impose a conditions of practice order.

The panel accepted advice from the legal assessor.

Decision and reasons on sanction

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

The panel took into account the following aggravating features:

- Lack of insight into failings
- A pattern of misconduct over a period of time
- Conduct which put patients at risk of suffering harm
- His apparent refusal to accept all the support that was offered

The panel also took into account the following mitigating features:

- Early admissions to some of the charges
- Some developing insight and steps taken by Mr Woodall to address the concerns
- Was engaging with preceptorship and did show some signs of improvement
- Having recently completed a return to practice programme and returned to work, Mr Woodall was working with challenging patients in a low secure forensic unit

[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 and the risk of repetition. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

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

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

The panel determined that it would be possible to formulate appropriate and practical conditions which would address the failings highlighted in this case. The panel accepted that Mr Woodall would potentially be willing to comply with conditions of practice.

The panel was of the view that it was in the public interest that, with appropriate safeguards in place and with training and assessments to ensure he was competent, Mr Woodall should be able to return to practise as a nurse.

Balancing all of these factors, the panel determined that that the appropriate and proportionate sanction is that of a conditions of practice order.

The panel was of the view that to impose a suspension order or a striking-off order would be wholly disproportionate and would not be a reasonable response in the circumstances of Mr Woodall's case because as the concerns are not so serious to require removal from the NMC register at this stage.

Having regard to the matters it has identified, the panel has concluded that a conditions of practice order will mark the importance of maintaining public confidence in the

profession, and will send to the public and the profession a clear message about the standards of practice required of a registered nurse.

The panel determined that the following conditions are appropriate and proportionate in this case:

‘For the purposes of these conditions, ‘employment’ and ‘work’ mean any paid or unpaid post in a nursing, midwifery or nursing associate role. Also, ‘course of study’ and ‘course’ mean any course of educational study connected to nursing, midwifery or nursing associates.

1. You must only work for a substantive employer which must not be an agency or on a self employed or private basis.
2. You must ensure that you are supervised by a registered nurse of a more senior band to you, any time you are working. Your supervision must consist of:
 - Working at all times on the same shift as, but not always directly observed by, a registered nurse of a more senior band to you.
 - Monthly meetings with your line manager to discuss your performance in the role.
3. You must be directly supervised by a registered nurse of a more senior band to you when preparing, dispensing and administering medication until you have been assessed and deemed fully competent by your supervisor.
4. You must work with your line manager to create a personal development plan (PDP). Your PDP must demonstrate how you will improve your practice to address the concerns in the charges found proved, particularly, medicines management and risk assessment of patients. You must:
 - a) Send your case officer a copy of your PDP at least one month before your next review hearing.

- b) Meet with your line manager at least every month to discuss your progress towards achieving the aims set out in your PDP.
 - c) Send your case officer a report from your line manager before your next review hearing. This report must show your progress towards achieving the aims set out in your PDP.
5. You must keep us informed about anywhere you are working by:
- a) Telling your case officer within seven days of accepting or leaving any employment.
 - b) Giving your case officer your employer's contact details.
6. You must keep us informed about anywhere you are studying by:
- a) Telling your case officer within seven days of accepting any course of study.
 - b) Giving your case officer the name and contact details of the organisation offering that course of study.
7. You must immediately give a copy of these conditions to:
- a) Any organisation or person you work for.
 - b) Any employers you apply to for work (at the time of application).
 - c) Any establishment you apply to (at the time of application), or with which you are already enrolled, for a course of study.
8. You must tell your case officer, within seven days of your becoming aware of:
- a) Any clinical incident you are involved in.
 - b) Any investigation started against you.
 - c) Any disciplinary proceedings taken against you.

9. You must allow your case officer to share, as necessary, details about your performance, your compliance with and / or progress under these conditions with:
- a) Any current or future employer.
 - b) Any educational establishment.
 - c) Any other person(s) involved in your retraining and/or supervision required by these conditions

The period of this order is for a period of 18 months, with a review.

The panel was of the opinion that the 12-month period sought by the NMC, would not be sufficient period time for Mr Woodall to secure a nursing position and show tangible improvement. Therefore, the public protection issues and the wider public interest concerns were best served by an 18-month condition of practice order.

Before the order expires, a panel will hold a review hearing to see how well Mr Woodall has complied with the order. At the review hearing the panel may revoke the order or any condition of it, it may confirm the order or vary any condition of it, or it may replace the order for another order.

Any future panel reviewing this case would be assisted by:

- A reflective piece using a recognised model, addressing the charges found proved and the steps taken to strengthen your practice
- Evidence of professional development, including Continued Professional Development (CPD) completed, including certificates and any courses addressing medicines management
- Testimonials from your supervisors, colleagues and any voluntary work you complete

This will be confirmed to Mr Woodall in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Ms Davies. She submitted that the imposition of an interim order is necessary in light of the public protection and the public interest concerns already highlighted in the panel's substantive decision. She invited the panel to impose an interim conditions of practice order for a period of 18 months. This, she submitted, would cover the appeal period should Mr Woodall choose to appeal the panel's decision and would be consistent with the panel's imposed sanction.

The panel accepted the advice of the legal assessor.

Decision and reasons on interim order

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

The panel concluded that the only suitable interim order would be that of a conditions of practice order, as to do otherwise would be incompatible with its earlier findings. The conditions for the interim order will be the same as those detailed in the substantive order for a period of 18 months due to the public protection and public interest concerns in this case.

If no appeal is made, then the interim conditions of practice order will be replaced by the substantive conditions of practice order 28 days after Mr Woodall is sent the decision of this hearing in writing.

That concludes this determination.