

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

**Substantive Hearing
Monday 19 June 2023 – Monday 26 June 2023
Tuesday 29 August 2023 – Thursday 31 August 2023**

Virtual Hearing

Name of Registrant: Lisa Ann Bastiani

NMC PIN 16I6535E

Part(s) of the register: Sub part 1 RNA: Adult nurse, level 1 (13 September 2016)

Relevant Location: Suffolk

Type of case: Misconduct

Panel members: Mark Gower (Chair, Lay member)
Lorna Taylor (Registrant member)
Anne Rice (Lay member)

Legal Assessor: Oliver Wise

Hearings Coordinator: Deen Adedipe

Nursing and Midwifery Council: Represented by Richard Ive, Case Presenter

Mrs Bastiani: Not present and unrepresented

Facts proved: 1, 2, 3a, 3b, 3c and 4 in part

Facts not proved: 4 in part

Fitness to practise: Impaired

Sanction: **Striking off order**

Interim order : **Interim suspension order (18 months)**

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Mrs Bastiani was not in attendance and that the Notice of Hearing letter had been sent to Mrs Bastiani's registered email address by secure email on 15 May 2023.

Mr Ive, 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 and that the hearing was to be held virtually, including instructions on how to join and, amongst other things, information about Mrs Bastiani's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence. Mrs Bastiani was given more than the 28 days' notice required by the Rules.

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

Decision and reasons on proceeding in the absence of Mrs Bastiani

The panel next considered whether it should proceed in the absence of Mrs Bastiani. It had regard to Rule 21 and heard the submissions of Mr Ive who invited the panel to continue in the absence of Mrs Bastiani. He submitted that Mrs Bastiani had voluntarily absented herself.

Mr Ive referred the panel to the email response dated 11 May 2023 from Mrs Bastiani in response to the email from the NMC asking her to confirm her attendance at the hearing. Mrs Bastiani stated :

'Hello, I am happy for the panel to proceed in my 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'*.

The panel has decided to proceed in the absence of Mrs Bastiani. In reaching this decision, the panel has considered the submissions of Mr Ive, the representations from Mrs Bastiani, and the advice of the legal assessor. It has had particular regard to the factors set out in the decision of *R v Jones (Anthony William)*, (No.2) [2002] UKHL 5 and *General Medical Council v Adeogba* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to all parties. The main considerations were:

- No application for an adjournment has been made by Mrs Bastiani;
- Mrs Bastiani has stated that she is happy for the panel to proceed in her absence;
- There is no reason to suppose that adjourning would secure her attendance at some future date;

- One witness has attended today to give live evidence, another is due to give evidence on Day 2;
- 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 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.

There is some disadvantage to Mrs Bastiani in proceeding in her absence. Mrs Bastiani will not be able to challenge the evidence relied upon by the NMC in person and will not be able to give evidence on her own behalf. However, in the panel's judgement, this can be mitigated. The panel can make allowance for the fact that the NMC's evidence will not be tested by cross-examination and, of its own volition, can explore any inconsistencies in the evidence which it identifies. Furthermore, the disadvantage is the consequence of Mrs Bastiani's decision to absent herself from the hearing.

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

Details of charge

That you, a registered nurse, between 3 October 2016 and 31 October 2019, whilst employed at East Suffolk and North Essex Foundation Trust;

- 1) On one or more occasion stole medication prescribed for patients/belonging to your employer as listed in schedule 1.
- 2) On one or more occasion stole equipment belonging to your employer as listed in schedule 1.
- 3) On one or more occasion did not ensure the safe storage of confidential patient information, in that you;
 - a) Removed/transported/stored without authority, one or more items belonging to the Trust as listed in schedule 2.
 - b) Removed/transported/stored one or more medication boxes with patient names on them to/at a home that you rented as listed in schedule 1.
 - c) Removed/transported/stored one or more items with patient information listed on them, in a car leased by yourself/at a home that you rented as listed in schedule 1.
- 4) Your actions in one or more of charges 1 & 2 above were dishonest, in that you without permission, took medication/equipment/patient notes, belonging to your employer, with an intention not to return them.

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

Decision and reasons on application to amend the charge

While deliberating on the facts, the panel came to the view that charges 1 and 2 were unlikely to be found proved, because not all the elements of the charge of theft were likely to be established. However, Mrs Bastiani's admitted dealings with the medication and equipment raised significant issues beyond stealing; in particular the safe keeping of medication, including controlled drug containers, the safe storage of sharps, and patient confidentiality.

The panel's fundamental duty was to hold a hearing which was fair and just to the registrant the public and the NMC. If all the elements in Section 1 of the Theft Act 1968 were not fully made out as charged within the current wording, the full gravity of the conduct alleged could not be reflected in the panel's final determination.

Consequently, during its deliberations the panel sought and received advice from the legal assessor, who summarised the relevant reasoning in the case of *The Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council, Ms Winifred Nompumelelo Jozi* [2015] EWHC 764 (Admin). He advised that panels have a duty to act in a more inquisitorial way than a court in a criminal case. Panels have a duty to ensure that significant issues of potential misconduct which are raised in the evidence before them are properly considered.

The panel then drafted a proposed amendment for consideration by the parties.

'That you, a registered nurse, between 3 October 2016 and 31 October 2019, whilst employed at East Suffolk and North Essex Foundation Trust;

- 1) *On one or more occasion stole , **inappropriately retained/ failed to ensure the safe removal/ transfer/ storage/ disposal** of medication prescribed for patients/belonging to your employer as listed in schedule 1.*

2) *On one or more occasion stole , **inappropriately retained/ failed to ensure the safe removal/ transfer/ storage/ disposal** equipment belonging to your employer as listed in schedule 1.'*

The panel then resumed the hearing, at which point these matters and the proposed amendments were put to Mr Ive. After a period for consideration, during which Mr Ive was able to obtain instructions, Mr Ive confirmed that the NMC agreed the amendments. During this time Mrs Bastiani was contacted by the case officer and provided with the copy of the proposed amendments. She responded in her email of 22 June 2023:

'I have no objections to the wording being amended.'

The legal assessor advised the panel to consider afresh whether such amendments could be fairly made at this stage without injustice to either party. He advised that the panel had a duty to consider that question notwithstanding the common ground of the parties.

The panel concluded that it was in the public interest that the full potential misconduct should be considered for determination at this hearing. No fresh evidence was being adduced. Charges 1 and 2 would not include an allegation of dishonesty, but the allegation of dishonesty in charge 4 remained. The panel determined that no injustice would be done to either party if these amendments were made. Accordingly, the panel approved the amendments.

After hearing further closing submissions in relation to the amended charges by Mr Ive, the panel resumed its consideration of the facts.

'That you, a registered nurse, between 3 October 2016 and 31 October 2019, whilst employed at East Suffolk and North Essex Foundation Trust;

- 1 *On one or more occasion stole , **inappropriately retained/ failed to ensure the safe removal/ transfer/ storage/ disposal** of medication prescribed for patients/belonging to your employer as listed in schedule 1.*

- 2 *On one or more occasion stole , **inappropriately retained/ failed to ensure the safe removal/ transfer/ storage/ disposal** equipment belonging to your employer as listed in schedule 1.*

- 3 *On one or more occasion did not ensure the safe storage of confidential patient information, in that you;*
 - a) *Removed/transported/stored without authority, one or more items belonging to the Trust as listed in schedule 2.*

 - b) *Removed/transported/stored one or more medication boxes with patient names on them to/at a home that you rented as listed in schedule*

 - c) *Removed/transported/stored one or more items with patient information listed on them, in a car leased by yourself/at a home that you rented as listed in schedule 1.*

- 4 *Your actions in one or more of charges 1 & 2 above were dishonest, in that you without permission, took medication/equipment/patient notes, belonging to your employer, with an intention not to return them.*

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

Schedule 1:

Collected from Registrant's Home on or around 10 October 2019

1. 105 Dexamethasone tablets 2mg
2. 97 Metoclopramide tablets 10mg
3. 111 Omeprazole tablets 20mg
4. 14 Cefalexin tablets 500mg
5. 28 Lansoprazole tablets
6. 104 Loperamide capsules 2mg
7. 19 Pregabalin capsules 75mg
8. 28 Anastrozole tablets 1mg
9. 6 Codeine Phosphate tablets 15mg
10. 56 Amlodopine tablets 5mg
11. 13 Ondansatran tablets 8mg
12. 28 Exemestane tablets 25mg
13. 14 Pirodoxine tablets 50mg
14. 33 Senna tablets
15. 84 Ferrous Fumerate tablets 210mg
16. 4 Co-codamol tablets 8/500mg
17. 6 ampoules of injectable Tanexamic Acid
18. 91 ampoules of Buscopan 20mg/1ml injectable
19. 16 ampoules of Levomepromazine 25mg/1ml injectable
20. 7 ampoules Dexamethasone 3.3mg/1ml injectable
21. 60 Glycopyrronium 200mcg/1ml injectable
22. 39 Glycopyrronium 600mcg/3ml injectable
23. 20 Clexane(Enoxaparin) 60mg prefilled injection
24. 25 ampoules Water for Injection
25. 1 Conotrane Cream 100g tube
26. 1 Biotene Oral Balance Saliva Replacement Gel 50g tube
27. 1 Nystan 30ml

28. 100 Docusate Sodium 100mg capsules
29. 17 Sharps boxes/bins
30. Mckinley Syringe Driver

Collected from Registrant's Home on or around 14 October 2019

31. 13 ampoules of Levomepromazine 25mg/1ml
32. 17 ampoules of Water for Injections
33. 8 ampoules of Cyclizine 50mg/1ml
34. 33 ampoules of Buscopan 20mg/1ml
35. Empty Midazolam ampoule
36. Empty Oxynorm ampoule
37. Empty Diamorphine 30mg box
38. 6 Sharps boxes/bins

Collected from Registrant's lease car on or around 18 October 2019

39. 4 empty ampoules of Buscopan 20mg/ml
40. 2 empty ampoules of Midazolam 5mg
41. 1 empty ampoule of Midazolam 10mg
42. 3 empty ampoules of Levomepromazine 25mg/ml
43. 1 empty ampoule Oxynorm 10mg/1ml
44. 2 empty ampoules Diamorphine 10mg
45. 4 empty ampoules of Water for Injection
46. Oxynorm 20mg/2ml
47. Diamorphine 10/mg
48. 5 ampoules of Levomepromazine 20mg/5ml
49. 2 used syringes from a syringe driver
50. 1 ampoule of Sodium Chloride
51. A swab from Patient X
52. Syringe Driver label for Patient Y

- 53. Envopak bag code ZJ999081
- 54. Envopak bag code ZJ984102

Collected from Person A's Home on 7 August 2020

- 55. 20 Water for Injection
- 56. Syringe Driver
- 57. One or more ampoules of Metoclopramide
- 58. One or more ampoules of Buscopan
- 59. One or more patient notes
- 60. One or more empty boxes of medication
- 61. 30ml syringe from a syringe driver
- 62. 9 sharps bin
- 63. 50 catheter stock needles
- 64. Laptop bag
- 65. 6 Envopak bags

Schedule 2

- 1. 183 Sheets of Patient Visit Lists
- 2. Medication sheets/charts/notes for 11 Patients
- 3. Patient notes for 14 Patients
- 4. 54 pages of visit lists containing patient details.
- 5. 3 Gold standard Framework Sheets with patient identities/names listed on them.
- 6. Medication with one or more patient identities/names listed on them.

7. A4 sheets with a list of postcodes

The panel was of the view that such an amendment was in the interests of justice.

The panel was satisfied that there would be no prejudice to Mrs Bastiani and no injustice would be caused to either party by the proposed amendment being allowed. The panel was of the view that the amendment has not overall extended the charges in 1 and 2 but has made the charges less onerous and a more accurate reflection to ensure public protection and the concerns identified relating to public interest can be considered, based on the evidence provided.

It was therefore appropriate to allow the amendment, to ensure clarity and accuracy.

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

During the hearing, Mr Ive at the instigation of the panel made a request that where references were to be made to Mrs Bastiani's health and personal circumstances, that these should be heard in private. 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.

The panel determined that it would go into private session when Mrs Bastiani's health and personal circumstances were discussed.

Decision and reasons on application to admit written statement/ hearsay evidence

The panel heard an application made by Mr Ive under Rule 31 to allow the written statement of Witness 3 into evidence. Witness 3 was not present at this hearing and, whilst it was open to the NMC to ensure that this witness was present, Mrs Bastiani had been informed and had not objected to the presentation of Witness 3's written statement at this hearing.

Mr Ive referred the panel to the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565, Admin. He acknowledged that there had to be a careful balancing of fairness to Mrs Bastiani when considering the admission of hearsay evidence as she was not attending.

Mr Ive submitted that the evidence is highly relevant and though not provided during the course of the NMC's investigation, was produced from and subsequent to police investigations.

Mr Ive, following remarks from Mr Wise, made available to the panel email correspondence between NMC and Mrs Bastiani dated 16 June 2023.

The NMC case officer had written as follows:

'Dear Lisa,

I am writing to inform you that we will not be calling the Police Officer (Witness 3) and that we will be applying under Rule 31 of the FtP rules 2004, to have their witness evidence and exhibits admitted as hearsay.

Please let us know whether you have any objections to this?'

Mrs Bastiani had replied:

'Hello Gillian,

Thank you for keeping me informed. I do not have any objections to that.'

On this basis Mr Ive submitted that it was fair to Mrs Bastiani to allow Witness 3's written statement and the exhibits into evidence.

The panel accepted the legal assessor's advice on the issues it should take into consideration in respect of this application. He referred the panel to Rule 31. The important questions for the panel to decide were: (1) was it 'fair' to admit the evidence, and (2) was the evidence 'relevant'. He advised that the panel could conclude that it was fair to admit the evidence because it assisted the presentation of both the NMC's and Mrs Bastiani's cases and that it was relevant to the factual issues before the panel. Moreover, Mrs Bastiani had indicated that she had no objection to the evidence going before the panel.

The panel noted that Witness 3 is a police officer. Her signed statement had been prepared in anticipation of being used in these proceedings and contained the paragraph, *'This statement ... is true to the best of my information, knowledge and belief'*.

The panel considered whether Mrs Bastiani would be disadvantaged by the change in the NMC's position of moving from reliance upon the live testimony of Witness 3 to that of her written statement and exhibits.

The panel considered that as Mrs Bastiani had been provided with a copy of Witness 3's statement and, as the panel had already determined that Mrs Bastiani had chosen voluntarily to absent herself from these proceedings, she would not be in a position to cross-examine this witness. There was also a public interest in the issues being explored fully which supported the admission of this evidence into the proceedings.

In the panel's judgement there was no reason to doubt the evidence of a police officer recording what was said at Mrs Bastiani's police interviews. The evidence was plainly relevant to the factual issues before the panel.

The panel also determined that the police interview may set out the relevant positions for Mrs Bastiani's admissions and her defence. The contents were likely to assist with the proper determination of the facts contained in the charges.

In these circumstances the panel concluded that Witness 3's written evidence should be admitted. The panel will give appropriate weight to this evidence once it has heard and read all the evidence and heard submissions on the facts.

Background

The NMC received a referral on 21 October 2019 from East Suffolk and North Essex NHS Foundation Trust (the Trust) in relation to Mrs Bastiani's fitness to practise.

On 10 October 2019, the Trust was contacted by the manager of the property that Mrs Bastiani had previously been renting. [PRIVATE]. Upon entering the property, it is alleged that the property manager discovered a large amount of medication including end-of-life drugs, their associated containers, patient notes, needles, syringes and sharps boxes and a syringe driver. The leased vehicle that Mrs Bastiani had been using was found, [PRIVATE]. A search of that vehicle allegedly revealed further medication, both unopened and empty ampoules of medication including controlled drug containers, used needles, syringes and a patient's swabs.

Subsequently on 7 August 2020 further medication and equipment was recovered from Person A's Garden.

The Trust had previously had concerns about controlled drugs going missing and Mrs Bastiani was one of those interviewed in August 2019.

The Police charged Mrs Bastiani with theft, but the prosecution later concluded that there was insufficient evidence to proceed, and the Judge therefore recorded a not guilty verdict in her case, on 22 March 2021.

Decision and reasons on facts

After the original charges had been read, the panel was informed that Mrs Bastiani had not made any admissions to the charges. Accordingly, the panel was required to determine the facts of all the charges, as amended in the course of the hearing. In making its determination the panel took into account all the oral and documentary evidence in this case together with the submissions made by Mr Ive on behalf of the NMC and Mrs Bastiani's case as emerged from the written evidence.

The panel has drawn no adverse inference from the non-attendance of Mrs Bastiani.

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

- Witness 1: Matron with East Suffolk and North Essex Foundation Trust;

- Witness 2: General Manager for Community Nursing and Therapy for Rural Suffolk and the Care Coordination Centre. East Suffolk and North Essex Foundation Trust.

The panel also admitted written/hearsay evidence from:

- Witness 3: Investigating Officer / Constable Suffolk Police.

Before making any findings on the facts, the panel accepted the advice of the legal assessor. He advised 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. He also advised, as explained in the case of *Lawrance v GMC* [2015] EWHC 588 (Admin), that where dishonesty is alleged, the panel must be satisfied that there is cogent evidence of dishonesty.

The panel considered that these allegations are serious, in that it is alleged that Mrs Bastiani appropriated a large volume of medication and equipment intended for patients over an extended period of time, placing those patients at a clear risk of harm. The panel noted that a quantity of the medication was for end-of-life care.

In the panel's general overview of the charges and the evidence, it noted that there appears to have been a build-up and retention of work-related property by Mrs Bastiani which include syringe drivers, used and unused medicines, confidential patient notes, broken vials, used needles, syringes and other items as listed in Schedules 1 and 2. The panel noted that during the police interview Mrs Bastiani had repeatedly denied stealing but acknowledged her failure to act and exercise good judgement.

The panel was of the view that Mrs Bastiani has behaved in a haphazard manner with regard to the management of medication and equipment over a period in excess of two years. She did this, on her own admissions during police investigations, by retaining, transferring and storing these items inappropriately and abandoning them at two separate properties (her formal residence and Person A's Garden), as well as in a leased car. The panel considered that although she was a recently qualified nurse at the time, she should have had an understanding of what was expected of her in her role. Mrs Bastiani has not lived up to that expectation but discharged her duties in regard to management of medication and equipment in a very chaotic and random manner. She made statements during her police interview that highlight troubles she had been facing in her personal life.

The panel found concerning the reported state of disarray of the clinical items found at Mrs Bastiani's rented property. The items found at the various locations were eventually put into 19 bin bags. These items included 32 sharps bins.

The panel had heard oral evidence from Witness 1 and Witness 2, and found it consistent with the written evidence they had given in their witness statements. The panel found both witnesses credible.

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

Charge 1

“On one or more occasion, inappropriately retained/ failed to ensure the safe removal/ transfer/ storage/ disposal of medication prescribed for patients/belonging to your employer as listed in schedule 1.”

This charge is found proved.

The panel determined that once the medication had been prescribed for patients it belonged to the patients, therefore it discounted the alternative as set out in the charge relating to 'belonging to your employer'.

In reaching this decision, the panel took into account the photographic evidence and various lists documenting items found at the two properties and the leased car. The panel found Mrs Bastiani's actions unprofessional, and that her repeated mishandling of the items she was responsible for in this way was inappropriate and not authorised.

The panel had regard to evidence referred to by Witness 1 and Witness 2. This included photographs and schedules of what was found and evacuated [PRIVATE].

The witnesses had found and retrieved many boxes of unused medication labelled with patient names, which included Diamorphine, Midazolam and other opioid medication containers throughout Mrs Bastiani's former residence. Further medication was found in an outhouse the next day.

The panel was referred to the Trust's policies which include the 'Suffolk Wide Joint Guideline for the Provision of 'Just In Case' Medications' which specify roles and responsibilities, supply of prescription medications, storage of medications, and their disposal. The policy addressed the disposal and storage of medication and contained a section detailing transit of medicines within the community.

Witness 1 and Witness 2 state categorically that Mrs Bastiani should not have had these items at home, and only in exceptional circumstances should nurses be transporting medication.

The panel had regard to Mrs Bastiani's admissions in the police interviews, to the list exhibited by Witness 1 which is set out in Schedule 1, and to the photographic evidence in the bundle. A high number of medications had been accumulated by Mrs Bastiani at her home, for example, 111 Omeprazole tablets (item 3) and 100 Docusate Sodium capsules (item 28).

The panel specifically had sight of photographs which identified packets of Buscopan, Levomepromazine (items 18 and 19) in the house and Diamorphine boxes, (item 37) in the house and (item 47) in the car.

The following extracts were taken from Mrs Bastiani's police interviews:

'I was aiming to specialise in 'end of life' palliative care so I was with controlled drugs a lot and medical equipment umm and I wasn't disposing of them like I should have done, to be honest [PRIVATE] I wasn't making the correct judgements. Umm I wrote my car off and there was a number of stuff in the car, I was aware of that, umm when I went to recover stuff from the car from the scrapyard, I put it all in bin bags and took it back to my address to sort through umm and again I didn't dispose of it properly, but I've never knowingly stolen any drugs or sold any medication of that sort people thought I'd done..'

[In relation to 2 boxes of Diamorphine that had gone missing]:

'Umm yes there was medication that went missing, umm apparently, I'd signed for it, which obviously I did sign for it and it was in my car and I just said 'no' , so I just chucked it away.'

'So, were these full boxes of Diamorphine ?'

" Umm I don't know specifically what these were, but if I'd seen any in my car I would have disposed of it like snapped them and put them in Sharps bins umm so I presume they would have been full boxes yeah, it's from a pharmacy'

'Okay, and you just binned them?'

'Umm so with, I can't remember exactly with Patient BB but I was going in there every day looking for some oral medication for him and I quite often the pharmacist would give me something to sign and take into the house as well, because I was there picking up his medication, umm so probably had it in a bag in my car umm I'd seen all my other patients and just forgot about it, I didn't think anything else of it'

'And how did you dispose of it?'

'I don't remember specifically with him, but if it was in my boot with other patients that are deceased, it probably just got put in with them and I just would have chucked it away'

Witness 1 and Witness 2 agreed that there were exceptional circumstances when a nurse may have to collect and take medicines on behalf of patients from the pharmacy and that controlled drugs should be transported in sealed Envopak bags. If the nurses had to remove any medication following a patient's death these should be returned directly to the pharmacy for formal destruction. In routine circumstances the Trust policy says that:

'Following the patient's death or if the medication is no longer required the family is responsible for returning the medication to the community pharmacy for destruction in the CD Envopak bag'.

The panel considered the personal difficulties Mrs Bastiani said she was facing. However, as a registered nurse the panel considered that Mrs Bastiani had a responsibility to her patients and to herself to alert her managers [PRIVATE] and to seek relevant support.[PRIVATE].

The panel was of the view that Mrs Bastiani had shown flashes of insight into her role and responsibility in handling, transporting and disposing of medication through her statements, but on several occasions did not discharge these responsibilities in the prescribed and expected manner in line with policy and standard training as a nurse. The panel found Mrs Bastiani's answers during interview often flippant as they mostly appeared to sweep aside any concerns raised.

The panel determined that the charge as framed sets it out that if ‘on one or more occasion’ and if one or more medication belonging to the Trust or patients on Schedule 1 was found to have been in the house or in the car, and was inappropriately retained, was not removed, transferred, stored or disposed of safely, then the charge was made out.

The panel was satisfied from the evidence before it that all of the medication and medication containers (all of which were the property of the patients) set out in Schedule 1 were inappropriately retained, stored, transferred or disposed of whilst in Mrs Bastiani’s control. Schedule 1 consists of 65 items, 14 of which pertain to charge 2; the remaining 50 items, predominantly medication, were found in Mrs Bastiani’s former residence, Person A’s Garden and Mrs Bastiani’s car.

The panel therefore found this charge proved.

Charge 2)

“On one or more occasion, inappropriately retained/ failed to ensure the safe removal/ transfer storage/ disposal of equipment belonging to your employer as listed in schedule 1.”

This charge is found proved.

The panel determined that the following 14 items of equipment were specific to this charge and were found in 3 separate locations following Mrs Bastiani’s dealing with them:

Item 29 - Sharps boxes/bins

Item 30- Mckinley Syringe Driver

Item 38 - 6 Sharps boxes/bins

Item 49 - 2 used syringes from a syringe driver

Item 51 - A swab from Patient X

Item 52 - Syringe Driver label for Patient Y

Item 53 - Envopak bag code ZJ999081

Item 54 - Envopak bag code ZJ984102

Item 56 - Syringe Driver

Item 61 - 30ml syringe from a syringe driver

Item 62 – 9 Sharps bin

Item 63 - 50 catheter stock needles

Item 64- Laptop bag

Item 65 - 6 Envopak bags

In reaching this decision, the panel took into account the items listed in *'Inventory of Items Retrieved from Car 18/10/2019'* (Schedule 1 – items 49, 51-54) which was compiled and exhibited by Witness 1 after Mrs Bastiani's [PRIVATE] lease car was found with the items unsecured and strewn inappropriately in the footwell and pockets of the car.

The panel then considered the items abandoned by Mrs Bastiani in Person A's Garden (items 56, 61-65). These included the water damaged syringe driver that was no longer fit for purpose, sharps bins containing used hypodermic needles, catheter stock needles, 6 Envopak bags, and a laptop bag.

The panel also considered items recovered from Mrs Bastiani's former residence (items 29, 30 & 38), including another syringe driver alongside used needles in paper pharmacy bags, yellow sharps bins containing used hypodermic needles and syringes. Many of these were found unsecured throughout the property.

The panel concluded that Mrs Bastiani had failed to follow the basic principles of infection control practice, as in all locations these items were unsecured and posed a risk to the public of potential needle stick injury and/or infection.

The panel were concerned at the evidence from Mrs Bastiani's police interview in which she stated that she knew where to dispose of the sharps bins and had access to this facility.

'When asked if she'd ever got rid of them, BASTIANI replied yes, would take them to the yellow incineration bins, one at East Bergholt in a shed, one at the back of Hadleigh Health Centre'.

The panel also had sight of photographic evidence taken prior to and during recovery of some of the items listed.

The panel determined all 14 items listed above constituted equipment belonging to the Trust which fell into one or more of the categories; inappropriately retained/ not transferred/not stored/ not disposed of safely.

The panel consequently found this charge proved.

Charge 3

"On one or more occasion did not ensure the safe storage of confidential patient information, in that you;

- a) Removed/transported/stored without authority, one or more items belonging to the Trust as listed in schedule 2.
- b) Removed/transported/stored one or more medication boxes with patient names on them to/at a home that you rented as listed in schedule 1.
- c) Removed/transported/stored one or more items with patient information listed on them, in a car leased by yourself/at a home that you rented as listed in schedule 1."

These charges are found proved.

The panel considered each of these sub-charges both as a whole and in the separate sub-charges.

In reaching this decision, the panel took into account its earlier findings in regard to charge 1 and charge 2. It determined that Charge 3 mostly depends on the same set of facts and circumstances, which include Mrs Bastiani's admissions during police interview.

The panel considered the part of the police interview where Mrs Bastiani was challenged on why she had patient documentation at home. Mrs Bastiani stated that she took them home to update the records at home and that she understood that she should not have taken them home.

Witness 1 in her written statement had documented information governance breaches relating to several patient identifiable items, 'visit lists', patient notes and other confidential information found across the property and inside the glove compartment of the car. She had indicated that the Trust had to write to some patients to offer an apology. The Trust had to advise the patients to change their door entry 'key safe' numbers, as these were visible on some of the items found. Witness 1 in her oral testimony confirmed that visit lists should have been shredded at the end of each day in line with the Trust policy.

The panel consulted the schedule of 'Patient Identifiable Notes/ Visit List Found' (Schedule 2) prepared by the Trust subsequent to the retrieval of the items. The panel was satisfied that the 183 sheets of confidential visit lists appear to match up with photographic evidence of the glove compartment of the car which relate to items 1 and 4 of Schedule 2 as referred to in the statement of Witness 1.

The panel had sight of photographic evidence of empty syringes from a syringe driver which had patients' details on it which were found in the damaged car; as well as labelled empty controlled drug boxes of Diamorphine Hydrochloride 10mg (item 47) and OxyNorm (item 46), which it was able to match to Schedule 1 and the 'Inventory of Items Retrieved from Car 18/10/2019', prepared by the Trust.

Referring to the 'Photographs of Items Retrieved from Property 14/10/20109', the panel noted items such as 6 sharps bins (item 38 of Schedule 1), a labelled empty box of Diamorphine Hydrochloride 30mg (item 37 of Schedule 1) and other boxes and ampoules of medication found in Mrs Bastiani's former house.

The panel determined that each of the sub-charges in charge 3 are made out for the reasons set out above.

The panel consequently found charges 3(a), 3(b) and 3(c) proved.

Charge 4

"Your actions in one or more of charges 1 & 2 above were dishonest, in that you without permission, took medication/equipment/patient notes, belonging to your employer, with an intention not to return them,"

This charge is found proved in part in relation to charge 2.

The panel was not satisfied that Mrs Bastiani was dishonest in relation to medication as set out in charge 1. The panel was satisfied that she was dishonest in relation to 2 pieces of equipment belonging to her employer, namely, the 2 syringe drivers. The panel was not so satisfied in relation to any of the other items listed in Schedule 1.

The panel accepted the advice of the legal assessor. He advised the panel to consider the state of mind of Mrs Bastiani and to determine whether her conduct was honest or dishonest by the standards of ordinary decent people. He advised that the standard of proof was on the balance of probabilities, but that, as indicated by *Lawrance v General Medical Council* [2012] EWHC 464 (Admin), the panel must not find dishonesty proved except by compelling evidence.

The panel considered whether there was compelling evidence. The panel concluded that it should consider the whole course of conduct over a roughly 2 year period. The panel determined that Mrs Bastiani's conduct was certainly chaotic and she grossly mismanaged medication and equipment for which she was responsible. However, the panel was satisfied that in respect of the syringe drivers it must have been obvious to her that she was mishandling valuable and essential items of which she must have been reminded and known that she should have returned them to her employers.

The panel considered that as the medication specified in the charge was prescribed to patients, it belonged to them rather than Mrs Bastiani's employers and therefore fell outside the boundaries of charge 4. Mr Ive conceded that the wording of this charge required a finding that the medicines belonged to the employer. This did not in any event remove the obligation on Mrs Bastiani to return the unused medication to a pharmacy licensed for the documented destruction of controlled drugs, in accordance with the Trust policy and in compliance with the law in relation to the chain of custody of controlled drugs. The panel considered evidence provided by Witness 1 and Witness 2 and Mrs Bastiani's own responses in interview when under police caution.

The panel was of the view as a registered nurse, Mrs Bastiani was aware of but did not follow guidance and the Trust policy outlining the procedures for handling medication, equipment and patient notes.

Mrs Bastiani explained how she would dispose of controlled drugs into the sharps bins:

'...so you snap it with the controlled drugs, that's what I done anyway, snap it and tip it so it cant be like used'

However, in her responses to questioning during police interview regarding where controlled medication should be taken for disposal:

'Umm, it should be back to the pharmacy...'

Mrs Bastiani justified her actions, stating they were not dishonest.

“I have never stolen anything nor taken things to be stored however I know my practice was below par and completely unacceptable”

The panel considered Mrs Bastiani's comments about her employer's equipment, e.g. glucometers and sphygmomanometers, supplied to ensure she could perform her role:

‘That’s was [sic] given when I started, it’s my property...’

‘...like its classed as NHS I Guess, but you don’t give it back at the end’

The panel considered prompts Mrs Bastiani had to return the items. The first being when she moved out of her rental property, [PRIVATE]. Mrs Bastiani asserted that she was having personal difficulties at these times. The third prompt was some 4 months later, in her police interview, yet some of these items including one of the syringe drivers were not recovered from Person A's garden after a further 7 months.

In the panel's judgement, Mrs Bastiani did not have any intention or plan to transfer the items to any further location or to dispose of them in the appropriate way. Her explanation was:

‘[PRIVATE] there was a number of stuff in the car, I was aware of that, umm when I went to recover stuff from the car from the scrapyard, I put it all in bin bags and took it back to my address to sort through umm and again I didn’t dispose of it properly, but I’ve never knowingly stolen any drugs or sold any medication of that sort people thought I’d done..’

The panel found that there was a lack of accuracy in areas of Mrs Bastiani's accounts of events, for example, in the police interview where she stated she had been retaining clinical items for around 2 years, which, if correct, would pre-date the period when she asserted that she was experiencing the personal issues which affected her judgement.

Mrs Bastiani demonstrated that she knew where equipment should be returned as she referenced 2 sites in her police interview.

In determining whether there was compelling evidence in relation to the dishonest taking of patient notes, the panel observed that patient notes had been collected from Person A's home, as listed in Schedule 1. The panel had regard to the statement of Witness 2, which stated that:

'All patient notes should be returned to the office. The only time they may be taken into staff homes is if they did a visit on their way home and they should return the notes to the office on their next working day.'

The panel noted Mrs Bastiani's police interview, in which she stated that she took the patient notes home as she intended to update them. She further stated that she would visit between 5 and 15 patients per day. On this basis the panel noted that the patient notes in her possession did not indicate that they had been accumulated over a period of time. Rather, the panel accepted that it was more likely than not that Mrs Bastiani had taken these notes home from patients she had visited that day with the intention of updating them. [PRIVATE]. In her response to the NMC, Mrs Bastiani claimed that she was....

'asked nearly daily to remove and update patient care plans from patient homes, I do remember gathering a lot of notes to take to the office and update.....[PRIVATE]....this was when I was at my worst mentally' .

Given this context, the panel was not satisfied that the explanation for Mrs Bastiani taking and retaining the patient notes was that she was dishonest.

Mr Ive had asked the panel to consider the fact that as Mrs Bastiani had moved out of the property leaving the medicines and clinical items throughout, she had abandoned the items in the damaged car.

The panel concluded that the 2 syringe drivers fell into a separate category. Mrs Bastiani must have appreciated their value to her employers and the need for them to be available not only to the patients for whom they were immediately to be used but for future patients. Mrs Bastiani was engaged in providing end of life care to some of her patients. She had a particular interest in that type of care, and she said that she was focussing her career on end of life care in her police interview. The panel concluded that she would know that these items were expensive. They would be in high demand for use by successive patients within the community setting. It must have been obvious to Mrs Bastiani that she should return them promptly after use. Mrs Bastiani had effectively decided that this equipment was her own to do with as she wanted when she knew these items belonged to, and were of value, to the Trust.

It could not be said that her retention of the syringe drivers was temporary but strongly pointed to a more permanent retention or outright disposal given the condition and circumstances in which they had been found.

Accordingly, the panel found charge 4 proved only in relation to the 2 syringe drivers referred to in Schedule 1.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Mrs Bastiani'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 misconduct. Secondly, only if the facts found proved amount to misconduct, the panel must decide whether, in all the circumstances, Mrs Bastiani's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Mr Ive referred the panel 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.*'

Mr Ive also referred the panel to the cases of *Remedy UK Limited v General Medical Council* [2010] EWHC 1245 (Admin) and *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).

Mr Ive submitted that Mrs Bastiani's actions had fallen short of the standards of conduct expected among practitioners and would be regarded as deplorable by fellow practitioners. He submitted that the facts found proved against Mrs Bastiani amount to a high degree of negligence in going about her duties and dishonesty in relation to the 2 syringe drivers that belonged to her employer.

Mr Ive submitted that it is part of the day to day practice of nurses to safely secure patient notes and drugs, and particularly controlled drugs. He referred to the 'Suffolk Wide Joint Guideline for the Provision of Just in Case Medications' that stated clearly that nurses were not permitted to take medication home and submitted that Mrs Bastiani had failed to secure medication securely in breach of that policy.

Mr Ive referred the panel to the East Suffolk and North Essex Medication Policy for Healthcare Professionals'. In contravention of this policy he submitted that Mrs Bastiani had stored medication in her home. Mr Ive submitted that she had also and failed to keep patient notes secure and confidential in breach of GDPR regulations.

Mr Ive submitted that Mrs Bastiani's standard of work fell short of what would be proper in the circumstances and the manner in which she fell short was extremely serious.

Mr Ive invited the panel to take the view that the facts found proved amount to misconduct. He referred to 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Mr Ive identified the specific, relevant standards where Mrs Bastiani's actions amounted to misconduct.

5 Respect people's right to privacy and confidentiality.

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.

18.4 take all steps to keep medicines stored securely

Submissions on impairment

Mr Ive moved on to the issue of impairment and addressed the panel on the need to have regard to protecting the public and the wider public interest. This included the need to declare and maintain proper standards and maintain public confidence in the profession and in the NMC as a regulatory body. This included reference to the cases of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin), and *Nicholas-Pillai v the General Medical Council*. [2009] EWHC 1048 (Admin).

Mr Ive submitted that it was essential when deciding whether fitness to practise was impaired, not to lose sight of the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. He asked the panel to consider not only whether Mrs Bastiani continued to present a risk to members of the public in 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.

Mr Ive referred the panel to *Grant* and submitted that all 4 limbs were engaged. He referred to *Nicholas-Pillai* which states that:

'the attitude of the practitioner to the events which give rise to the specific allegations against him is in principle something which can be taken into account in his favour or against him by the panel, both at the stage when it considers whether his fitness to practice is impaired and at the stage of determining what sanction should be imposed upon him'.

Mr Ive submitted that Mrs Bastiani initially denied the allegations when they were brought against her. He also referred to her attitude during her police interviews which showed a lack of sufficient insight into the impact of her actions on patients, colleagues and the public.

Referring the panel to the NMC guidance on impairment, Mr Ive asked the panel to consider whether Mrs Bastiani's misconduct is easily remediable and whether it has been remedied. He submitted that her misconduct is not easily remediable and there is nothing to show that it is unlikely to be repeated. He submitted that Mrs Bastiani is not at this point in time able 'to practise kindly, safely and professionally'. He submitted that her fitness to practice is currently impaired.

The panel accepted the advice of the legal assessor, who referred to *Grant*.

Decision and reasons on misconduct

When determining whether the facts found proved amount to misconduct, the panel had regard to the terms of the Code.

The panel was of the view that Mrs Bastiani's actions did fall significantly short of the standards expected of a registered nurse, and that Mrs Bastiani's actions amounted to a breach of the Code. Specifically:

[2015 Code]

1 Treat people as individuals and uphold their dignity

To achieve this, you must:

1.2 make sure you deliver the fundamentals of care effectively

5 Respect people's right to privacy and confidentiality

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

To achieve this, you must:

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

10 Keep clear and accurate records relevant to your practice

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

To achieve this, you must:

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

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:

18.2 *keep to appropriate guidelines when giving advice on using controlled drugs and recording the prescribing, supply, dispensing or administration of controlled drugs*

18.4 *take all steps to keep medicines stored securely*

19 Be aware of, and reduce as far as possible, any potential for harm associated with your practice

To achieve this, you must:

19.3 *keep to and promote recommended practice in relation to controlling and preventing infection*

19.4 *take all reasonable personal precautions necessary to avoid any potential health risks to colleagues, people receiving care and the public*

20 Uphold the reputation of your profession at all times

To achieve this, you must:

20.1 *keep to and uphold the standards and values set out in the Code*

20.2 *act with honesty and integrity at all times...*

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 Mrs Bastiani's actions amounted to serious clinical failings and breaching of the fundamental tenets of nursing practice.

The panel determined that she had a blatant disregard for the proper management of drugs and equipment required for her role. Given the manner in which she handled the Trust's and patients' medication, equipment and notes, she did not consider the impact this could have had in relation to safety and confidentiality. The panel was of the view that there were multiple breaches of GDPR regulations and the Trust's policies as Mrs Bastiani had not secured patient notes appropriately.

The panel determined that there was a significantly high risk of harm to the public in relation to improper ingestion of medication, infection and needle stick injuries, given the manner in which Mrs Bastiani left used sharps and controlled medication discarded across her former residence, her rented car and Person A's Garden.

Mrs Bastiani signed out controlled drugs such as Diamorphine, which were never shown to be delivered to the patient and of which the empty box was later found in her car. This is a serious form of misconduct because it is so important that controlled drugs are not mishandled.

The panel was of the opinion that an ordinary member of the public would be shocked at the way Mrs Bastiani had amassed up to 19 bin bags of used medication, clinical equipment and sharps bins in the course of her work and had failed to ensure their safe disposal.

The panel determined that Mrs Bastiani's conduct was certainly chaotic and she grossly mismanaged medication and equipment for which she was responsible.

The panel has found dishonesty in relation to the syringe drivers, which, given their financial and clinical value, clearly justifies a finding of misconduct.

The panel found that Mrs Bastiani's actions did fall seriously short of the conduct and standards expected of a nurse and amounted to misconduct.

Decision and reasons on impairment

The panel next went on to decide if as a result of the misconduct, Mrs Bastiani'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 judgment of Mrs Justice Cox in the case of *CHRE v NMC and Grant* in reaching its decision. At 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.'

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

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

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

The panel determined that all limbs (a, b, c and d) were engaged.

The panel finds that patients and member of the public were put at risk of potential harm as a result of Mrs Bastiani's misconduct. Mrs Bastiani's misconduct had breached the fundamental tenets of the nursing profession and therefore brought its reputation into disrepute. It was satisfied that confidence in the nursing profession would be undermined if its regulator did not find charges relating to dishonesty extremely serious.

The panel considered that Mrs Bastiani's responses during her police interviews were inconsistent, flippant and demonstrated limited insight of the impact of her actions on members of the public.

The panel was of the view, that although Mrs Bastiani accepted she was at fault, and does try to explain the circumstances around her actions, any emerging insight is focussed mainly on how events impacted on her. She has not demonstrated an understanding of how her actions put patients at a risk of harm.

Mrs Bastiani has not demonstrated an understanding of why her actions would impact negatively on the reputation of the nursing profession and has not explained how she would handle the situation differently in the future.

The panel had regard to Mrs Bastiani's reflection, where she stated that:

'At the time I was at a very low point in my life and was going through extreme life changes. I have never stolen medication and was acquitted of all charges however I understand how disappointed my peers and patients felt at the time. [PRIVATE]. Major lessons have been learnt.'

However, the panel was of the view that this was not robust and found that Mrs Bastiani has not spoken to the attitudinal concerns around her dishonesty. [PRIVATE].

The panel had regard to the NMC's guidance which suggests the following question should be considered when deciding whether a professional's fitness to practise is impaired:

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

The panel determined that Mrs Bastiani has not demonstrated a strengthening of her practice and has provided no assurance that her actions would not be 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 determined that a finding of impairment on public interest grounds is required as public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Mrs Bastiani's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

Mr Ive reminded the panel that in the Notice of Hearing, dated 15 May 2023, the NMC had advised Mrs Bastiani that it would seek the imposition of a striking off order if it found Mrs Bastiani's fitness to practise currently impaired.

Mr Ive told the panel that the NMC are still seeking a striking off order. He submitted that there is presently a risk to the public should Mrs Bastiani be allowed to practise unrestricted in light of the panel's findings of misconduct and current impairment on the grounds of public protection. Mr Ive referred the panel to the NMC guidance on sanctions and seriousness.

He referred the panel to the cases of *Giele v General Medical Council* [2005] EWHC 2143 (Admin), *Brennan v Health Professionals Council* [2011] EWHC 41 (Admin), *Daraghmeh v General Medical Council* [2011] EWHC 2080 (Admin), *Kamberova v Nursing and Midwifery Council* [2016] EWHC 2955 (Admin) and *Council for the Regulation of Health Care Professional v (1) General Dental Council (2) Fleischmann* [2005] EWHC 87 (Admin).

Mr Ive submitted that either taking no action or imposing a caution order would be inappropriate in this case given the seriousness of the matter as so many items were found to have been inappropriately retained, stored and transferred. He submitted that the police were involved, that dishonesty has been found proven and there have been public protection issues identified.

Mr Ive submitted that a conditions of practice order would also not be appropriate in this case. He submitted that given the dishonesty element involved, imposing conditions around this may prove difficult given the serious nature of the matter. He submitted that the misconduct is at the higher end of the spectrum.

Furthermore, Mr Ive submitted that a suspension order would not be appropriate in this case. He submitted that Mrs Bastiani has provided limited insight and no evidence of strengthening of her practice albeit she has been under restrictions. Mr Ive explained that the matter occurred repeatedly over a prolonged period of time and involves deep seated personality issues. In addition, there is the proven dishonesty aspect to consider which in itself is hard to remedy. Mr Ive submitted that temporarily removing Mrs Bastiani from the register would be insufficient in addressing the risks and public interest factors present.

Mr Ive submitted that the concerns which have arisen in this case are not just linked to Mrs Bastiani's clinical practice.[PRIVATE]. He submitted there were aggravating factors such as the breach of GDPR, breach of the Trust's policies in medicine management, associated dishonesty and a pattern of behaviour relating to multiple acts of inappropriately retaining, removing, transferring, and storing medical items across a significant period of time from the homes of numerous vulnerable patients.

Mr Ive referred to Mrs Bastiani's *'flippant'* responses in police interviews and lack of engagement with these proceedings and submitted that there has been a lack of insight, a lack of remorse and a lack of remediation.

Mr Ive submitted that Mrs Bastiani's actions are fundamentally incompatible with continued registration and with being a registered professional and as such the only appropriate sanction is that of a striking off order. He submitted that such an order is necessary to preserve public confidence in the profession, and to mark the seriousness of the misconduct. Mr Ive therefore invited the panel to consider the imposition of a striking off order.

Mrs Bastiani has engaged with the NMC and has provided an explanation of her errors. She has not participated in this hearing, except to respond helpfully to a request for admission of hearsay evidence and to say that she did not object to the amendments to the charges.

The panel also bore in mind Mrs Bastiani's written submissions that indicate;

'I've made massive life changes over the last couple of years [PRIVATE] and things may of taken a different turn but I've learnt a lot...'

'I would love to return to Nursing and now more than ever I feel I have so much to give.'

The panel accepted the advice of the legal assessor.

Decision and reasons on sanction

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

The panel determined that there remains a serious risk of harm, given the circumstances that include gross professional misconduct and dishonesty.

The panel took into account the following aggravating features:

- Her conduct put patients at risk of suffering harm. There was serious mismanagement of medication which included controlled drugs.
- Her dishonesty caused the Trust and patients to be deprived of valuable equipment.
- There were significant failings in fundamental nursing practice which include medicines management and infection control.
- The pattern of behaviour continued repeatedly over a period of time. The misconduct was not a single isolated incident. A large number of items were recovered at Mrs Bastiani's former residence, in her rented car and in Person A's garden, which were amassed over a long period of time.
- There were multiple patient confidentiality and GDPR breaches including the failure to secure patient notes and the retention of empty medication boxes labelled with the patients' details.
- Mrs Bastiani's insight into the failings as regards the impact on patients, colleagues, and members of the public can be described as merely emerging.

The panel also took into account the following mitigating features:

- Mrs Bastiani was a relatively inexperienced nurse working in a challenging and autonomous role within the community.
- [PRIVATE].
- [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 sufficient to protect the public or otherwise in the public interest to take no further action.

It then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Mrs Bastiani's practice would not be appropriate in the circumstances. The SG states that a caution order may be appropriate where *'the case is at the lower end of the spectrum of impaired fitness to practise and the panel wishes to mark that the behaviour was unacceptable and must not happen again.'* The panel considered that Mrs Bastiani'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 sufficient to protect the public or otherwise in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Mrs Bastiani's registration would be a sufficient and appropriate response. The panel determined that whilst it may be possible to formulate conditions relating to some of the failings, the fact that the impairment arises from the most fundamental elements of a registered nurse's role, in particular the management and handling of medication, equipment and patient notes would mean that Mrs Bastiani would require very close supervision, tantamount to suspension. Further, Mrs Bastiani's attitudinal concerns, and low level of engagement at this stage of the proceedings would render conditions unworkable and insufficient to

protect the public and satisfy the public interest. The panel had no assurance that Mrs Bastiani would adhere to any conditions imposed. Furthermore, the panel concluded that the placing of conditions on Mrs Bastiani's registration would not adequately address the seriousness of this case and would not protect the public.

The panel then went on to consider whether a suspension order would be an appropriate sanction. The SG states that suspension order may be appropriate where some of the following factors are apparent:

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*
- *The Committee is satisfied that the nurse, midwife or nursing associate has insight and does not pose a significant risk of repeating behaviour.*

The panel considered that none of these indicative factors were applicable as the misconduct was widespread and took place over a significant length of time and involved attitudinal issues, notably dishonesty. Further, Mrs Bastiani had displayed limited insight, the panel therefore determined that the risk of repetition remained.

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

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

Finally, in looking at a striking-off order, the panel took note of the following paragraphs of the SG:

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

Mrs Bastiani'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 determined the findings in this particular case demonstrate that Mrs Bastiani's actions raised fundamental questions about her professionalism. There was serious mishandling of medication and equipment including controlled drugs. The finding of dishonesty put her trustworthiness in question, and her actions deviated significantly from expected standards of conduct and behaviour. The panel determined that to allow her to continue to practise would fail to protect the public and would undermine public confidence in the profession and in the NMC as a regulatory body.

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

The panel considered that this order was necessary to protect the public, 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.

This will be confirmed to Mrs Bastiani in writing.

Interim order

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

Submissions on interim order

The panel took account of the submissions made by Mr Ive. He submitted that Mrs Bastiani has the right to appeal. He told the panel the previous interim order has obviously been automatically discharged.

He submitted that given that a striking off order has been imposed, an interim order for up to 18 months would be the appropriate order under the circumstances, on the grounds of public protection as well as being otherwise in the public interest for all the reasons that the panel identified in their determination.

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

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

That concludes this determination.