

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

**Substantive Hearing
Thursday 9 February 2023 – Friday 17 February 2023**

Virtual Hearing

Name of Registrant:	Kelly Marie Campbell
NMC PIN	12F1241E
Part(s) of the register:	Registered Nurse – Sub Part 1 Adult Nursing – December 2012
Relevant Location:	Rochdale
Type of case:	Misconduct
Panel members:	Nicola Dale (Chair, Lay member) Richard Curtin (Registrant member) Catherine Cooper (Registrant member)
Legal Assessor:	Paul Hester
Hearings Coordinator:	Elena Nicolaou
Nursing and Midwifery Council:	Represented by Amy Hazlewood, Case Presenter
Miss Campbell:	Not present and unrepresented
Facts proved:	Charges 7a, 7b, 8, 9a, 9b, 10, 11a, 11b, 12, 13a, 13b, 13c, 13d, 13e, 14 and 15
Facts not proved:	Charges 1a, 1b, 2, 3, 4a, 4b, 4c, 5 and 6
Fitness to practise:	Impaired
Sanction:	Striking-off order
Interim order:	Interim suspension order (18 months)

Details of charge (as amended)

That you, a registered nurse:

- 1) On unknown dates between February 2019 and June 2019 whilst working on Oasis Unit ('Oasis'):
 - a) Regularly went from Oasis Unit to Wolstenhome Unit to obtain Codeine and/or Co-codamol tablets stating that Oasis had run out of their stock allocation when you knew this was not accurate. **[NOT PROVED]**
 - b) During this period you took for your own private use up to 336 Codeine and 712 Co-codamol tablets. **[NOT PROVED]**
- 2) Your actions at charge 1a were dishonest in that you knew Oasis had not run out of its stock allocation. **[NOT PROVED]**
- 3) Your actions at charge 1b were dishonest in that you knew that the Codeine and/or Co-codamol belonged to Oasis and/or Wolstenholme and that you were not permitted to use it except in fulfilment of your duties as a nurse. **[NOT PROVED]**
- 4) On 3 and/or 4 September 2019:
 - a) Accessed the controlled drugs cupboard without a second checker. **[NOT PROVED]**
 - b) Dispensed liquid Oromorph (18.5mls) and Oxynorm (32mls) and failed to document who the medication had been administered to by reference to the patient, the date, the time and the dose given. **[NOT PROVED]**
 - c) You took the drugs for your own private use. **[NOT PROVED]**
- 5) Your actions at 4a and/or b were dishonest in that you accessed the controlled drugs cupboard without a second checker and/or dispensed Oromorph and/or Oxynorm without creating appropriate records to conceal your actions in taking same for your private use. **[NOT PROVED]**

- 6) Your actions at charge 4c were dishonest in that you knew that the Oromorph and/or Oxynorm belonged to Oasis Unit and that you were not permitted to use it expect in fulfilment of your duties as a nurse. **[NOT PROVED]**

- 7) On 10 September 2019:
 - a) Removed one strip (14 tablets) of Codeine from Patient A's locker without clinical justification. **[PROVED]**
 - b) You took the tablets for your own private use. **[PROVED]**

- 8) Your actions at charge 7b were dishonest in that you knew the medication referred to belonged to Patient A and you did not have permission to take it for your own private use. **[PROVED]**

- 9) On 11 September 2019:
 - a) Removed four strips (56 tablets) of Codeine from a Patient B's locker without clinical justification. **[PROVED]**
 - b) You took the tablets for your own private use. **[PROVED]**

- 10) Your actions at charge 9 b were dishonest in that you knew the medication referred to belonged to Patient B and you did not have permission to take it for your own private use. **[PROVED]**

- 11) On 16 September 2019:
 - a) Removed half a strip (7 tablets) of Codeine belonging to Patient C from the Recorded Drugs cupboard without clinical justification. **[PROVED]**
 - b) You took the tablets for your own private use. **[PROVED]**

12) Your actions at charge 11b were dishonest in that you knew the medication referred to belonged to Patient C and you did not have permission to take it for your own private use. **[PROVED]**

13) On 7 October 2019:

a) Removed two strips (28 tablets) of Codeine belonging to Patient D upon his transfer to Wolstenholme from Oldham Hospital without clinical justification.

[PROVED]

b) Failed to book Patient D's Codeine into the Recorded Drugs Cupboard.

[PROVED]

c) Failed to complete a Datix incident report regarding the alleged loss of the Codeine. **[PROVED]**

d) Failed to report or notify anyone of the alleged loss of the Codeine. **[PROVED]**

e) You took the tablets for your own private use. **[PROVED]**

14) Your actions at charges 13b and/or c and/or d were dishonest in that you failed to appropriately record the codeine in the Recorded Drugs book and/or record the alleged loss of the codeine on a Datix incident report and/or notify anyone of the alleged loss of the codeine to conceal your actions in taking same for your private use. **[PROVED]**

15) Your actions at charge 13e were dishonest in that you knew the medication referred to belonged to Patient D and you did not have permission to take it for your own private use. **[PROVED]**

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

Decision and reasons on service of Notice of Hearing

The panel was informed at the start of this hearing that Miss Campbell was not in attendance and that the Notice of Hearing had been sent to Miss Campbell's registered address by recorded delivery and by first class post on 9 January 2023.

Ms Hazlewood on behalf of the Nursing and Midwifery Council (NMC), referred the panel to the post office 'Customer Receipt' within the bundle and submitted that the notice was posted to Miss Campbell's registered address on 9 January 2023. She submitted that there was no signed for printout indicating that Miss Campbell had received this due to the track and trace service being down and that receipt could not be confirmed.

Ms Hazlewood also referred the panel to the Proceeding in Absence (PIA) bundle which shows an email sent to Miss Campbell on both 9 and 30 January 2023, advising her of the hearing details. No response was received from Miss Campbell to either of those emails. There has been no engagement from Miss Campbell in relation to these proceedings.

Ms Hazlewood 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 noted that the Rules do require the NMC to prove posting of the notice to the registrant's address and not receipt by the registrant. In this regard, the panel noted the extract from the NMC's recorded delivery post book stating that the notice was posted on 9 January 2023 and the printout from the track and trace service.

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 Miss Campbell's right to attend, be represented and call evidence, as well as the panel's power to proceed in her absence.

In the light of all of the information available, the panel was satisfied that Miss Campbell 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 Miss Campbell

The panel next considered whether it should proceed in the absence of Miss Campbell. It had regard to Rule 21 of the Rules and heard the submissions of Ms Hazlewood who invited the panel to proceed in the absence of Miss Campbell. She submitted that Miss Campbell had voluntarily absented herself.

Ms Hazlewood submitted that there had been no engagement at all by Miss Campbell with the NMC in relation to these proceedings and, as a consequence, there was no reason to believe that an adjournment would secure her attendance on some future occasion. Ms Hazlewood took the panel through the PIA bundle, namely the emails that were sent to Miss Campbell on 9 and 30 January 2023, and that no response was received to either of those.

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)* (No.2) [2002] UKHL 5.

The panel has decided to proceed in the absence of Miss Campbell. In reaching this decision, the panel has considered the submissions of Ms Hazlewood, 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* [2016] EWCA Civ 162 and had regard to the overall interests of justice and fairness to both parties. It noted that:

- No application for an adjournment has been made by Miss Campbell;
- Miss Campbell has not engaged with the NMC and has not responded to any of the letters sent to her about this hearing;
- There is no reason to suppose that adjourning would secure her attendance at some future date;
- Two witnesses have attended today to give live evidence, others are also due to attend;
- 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 Miss Campbell in proceeding in her absence. Although the evidence upon which the NMC relies will have been sent to Miss Campbell at her registered address, she has made no response to the allegations. She will not be able to challenge the evidence relied upon by the NMC 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 limited disadvantage is the consequence of Miss Campbell's decision to absent herself from the hearing, waive her rights to attend, and/or be represented, and to not provide evidence or make submissions on her own behalf.

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

Decision and reasons on application to amend the charge

The panel heard an application made by Ms Hazlewood on behalf of the NMC, to amend the wording of the stem of charge four.

The proposed amendment was:

*'4) On **3 and/or** 4 September 2019...'*

It was submitted by Ms Hazlewood that the proposed amendment would provide clarity and more accurately reflect the evidence. She submitted that Witness 1 and Witness 2 speak to that particular charge and pertains to the evidence that medication allegedly went missing during the night shift on the 3 September 2019, and it was then identified the next day; 4 September 2019. She submitted that there is no unfairness caused to Miss Campbell and this amendment simply captures a wider date span that would allow the NMC to find the charge proved/not proved that may have occurred on the night shift of 3 September 2019 and/or the morning of 4 September 2019.

The panel accepted the advice of the legal assessor.

The panel had regard to Rule 28 of the Rules. Having regard to the merits of the case, 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 Miss Campbell and no injustice would be caused to either party by the proposed amendment being allowed. It was therefore appropriate to allow the amendment, as applied for, to ensure clarity and accuracy.

Decision and reasons on application to admit evidence contained in all the witness statements

The panel noted that Miss Campbell was not present nor represented. The panel having carefully read the NMC witness statement bundle noted that there were no redactions and queried whether certain passages within the various statements could be fairly admitted. In raising these queries, the panel had regard to Rule 31 of the Rules. The panel noted that admissible evidence must be relevant to the issues in the case and must be fair when balancing the interests of the NMC with those of Miss Campbell. The panel raised queries in respect of these passages and invited Ms Hazlewood to respond.

Ms Hazlewood submitted that all the contents of the witness statements are relevant and fair to the issues of the charges. She submitted that the NMC invites the panel to take a view on the hearsay evidence before it and make a judgement of admissibility, including the relevance and fairness of it. She submitted that it is for the panel, now that it has had sight of the evidence itself, to come to a decision on the evidence before it.

Ms Hazlewood referred to Rule 31 and the test set out in *Thomeycroft v NMC* [2014] EWHC 1565 (Admin). She submitted that the NMC's position is that the evidence that has been provided is not sole and decisive evidence, and that there has been no challenge from Miss Campbell in regard to such evidence that the NMC seeks to rely on. She submitted that there is no suggestion that any of the witnesses have fabricated their evidence. She submitted that the NMC have secured the attendance of witnesses who will be available for cross examination, and that will be undertaken when they are called upon. She submitted that the evidence that is being relied upon is admissible, fair and relevant as it goes to the charges in this case.

Ms Hazlewood referred the panel to the case of *EI Karout v NMC* [2019] EWHC 28 (Admin) and submitted that, as the NMC feel all of the evidence is admissible, it cannot point towards any evidence in particular.

Ms Hazlewood submitted that it is for the panel to adjudicate what is admissible in this case. If the panel is of the view that there are sections of the evidence that are inadmissible, then the panel does have the power to exclude it. She submitted that there is relevance in all of the witness statements for the charges to be fairly determined. She reminded the panel that it is a matter for it to make a ruling on the admissibility of the evidence and which parts. She referred to the case law mentioned previously and submitted that there is nothing contained in those judgements that indicates a redacted copy of the NMC bundle is to be provided.

Ms Hazlewood submitted that in relation to paragraph nine of Witness 1's statement, this is evidence that speaks to the nature of the processes of checking the medication at the time. She submitted that evidence surrounding the checks in place goes to the heart of the issues, namely whether Miss Campbell did take the drugs as alleged. She submitted that this provides context of the allegation, but it is not sole or decisive evidence. She reminded the panel that Witness 1 can be questioned during cross examination, that this is contextual evidence pertaining to the situation at the time, and that it is fair, relevant and admissible.

Ms Hazlewood submitted that in relation to paragraph 10 of Witness 1's statement, this is not sole or decisive evidence, and the panel will have the opportunity to hear from Witness 2 who can speak to the charges, namely charge four. Witness 1 can also be questioned during cross examination. She submitted that it is relevant, fair and admissible.

Ms Hazlewood submitted that in relation to paragraph 36 of Witness 1's statement, the investigation was carried out by Witness 1 who will be giving oral evidence. She submitted that the Witness 1 can be cross examined on this aspect, and the panel are not bound by a decision on an internal investigation in any event.

Ms Hazlewood submitted that in relation to paragraph five of Witness 3's statement, Witness 3 can be questioned on this aspect of the statement during cross examination. She submitted that this is direct evidence from Witness 3 towards a relevant issue. She

submitted that Witness 1 will also be able to speak to this charge. The panel will not be hearing from the two pharmacists referenced in this paragraph, but questions can be asked on the investigation that Witness 1 was involved in. She submitted that it is not sole or decisive evidence, and it is fair, relevant and admissible.

Ms Hazlewood submitted that in relation to paragraph 10 of Witness 3's statement, this is relevant under Rule 31(1) and goes to the circumstances leading up to the medication allegedly going missing. She submitted that this is not sole or decisive evidence, and questions relating to obtaining this information can be put to Witness 3. She submitted that it is fair, relevant and admissible.

Ms Hazlewood submitted that in relation to paragraph six and seven of Witness 2's statement, this is direct evidence from Witness 2 and is not hearsay evidence. She submitted that this aspect of the statement is following on from a call Witness 2 had with the Ward Manager at the time. She submitted that both paragraphs are direct evidence and part of Witness 2's statement.

Ms Hazlewood submitted that in relation to paragraph 13 of Witness 2's statement, this is also direct evidence, and it is not hearsay evidence. She submitted that Witness 2 will be giving oral evidence and he can be questioned on this aspect.

Ms Hazlewood submitted that in relation to paragraph 15 of Witness 5's statement, this can be questioned during Witness 5's oral evidence during cross examination and it is not sole or decisive evidence. She submitted that this is admissible as it speaks to the circumstances surrounding this aspect of the case, and it is fair and relevant to the charge. In relation to the last sentence of paragraph 16, she submitted that this is direct evidence of Witness 5 and it is not hearsay evidence.

The panel accepted the advice of the legal assessor.

The panel gave the application in regard to the evidence within the witness statements careful consideration.

Paragraph nine – Witness 1

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that, given it will have an opportunity to test this evidence with Witness 1 during examination and panel questions, it would be fair to admit this passage. It is not sole or decisive evidence. The panel considered that it does have sight of the Controlled Drug (CD) book that is mentioned, which indicates that the check was recorded. It also considered that it has an exhibit to support what is written in this paragraph. In light of the above, the panel decided that it is fair to admit this evidence.

Paragraph 10 – Witness 1

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that, given that it will have an opportunity to test this evidence with Witness 1 during cross examination, it will be fair to admit this. It considered that as it will also be hearing oral evidence from Witness 2, who was one of the nurses who visually checked the bottle, it is not sole or decisive evidence. In light of the above, the panel decided that it is fair to admit this evidence.

Paragraph 36 – Witness 1

The panel noted that within the exhibit bundle, there is the local disciplinary investigation report which includes a conclusion. The panel carefully considered the case of *Doris Enemuwe v NMC* [2015] EWHC 2081 (Admin) and decided that the conclusion in the

report is inadmissible. The panel in coming to this conclusion noted the charges in this hearing and the scope of the local investigation. The panel decided that the issues that it will have to decide during this hearing are the issues upon which the local investigation had to decide. The panel noted in *Enemuwe* that whilst a professional panel may know of the existence of a disciplinary investigation it should not know of previous findings on the very issues that this panel needs to decide in relation to the charges. For this reason, the panel decided to rule the conclusion of the investigation report as inadmissible.

Paragraph five – Witness 3

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that, given that it will have an opportunity to test this evidence with Witness 3 during examination and panel questions, it is fair to admit it. During examination and panel questions, the panel will be able to establish whether this evidence is direct or not. Depending on this, the panel can then either take the evidence into account or disregard it. In light of the above, the panel decided to admit this evidence.

Paragraph 10 – Witness 3

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that this evidence refers to Patient D's [PRIVATE]. The panel considered that it does have the opportunity to question Witness 1 about this evidence during examination and panel questions as she was the person that took the statement from Patient D's [PRIVATE]. In light of the above, the panel decided to admit this evidence.

Paragraph six and seven – Witness 2

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that it will have the opportunity to question Witness 2 on the evidence during examination and panel questions, and it also has evidence from the CD book to support that a check was completed. During examination and panel questions, the panel will be able to establish whether this evidence is direct or not. Depending on this, the panel can then either take the evidence into account or disregard it. In light of the above, the panel decided to admit this evidence.

Paragraph 13 – Witness 2

This passage clearly relates to evidence which is relevant to the charges. The panel went on to consider whether it would be fair to admit this passage.

The panel considered that it will have the opportunity to question Witness 2 on the evidence during examination and panel questions, and what the discussions regarding management were about at the time. In light of the above, the panel decided to admit this evidence.

Paragraph 15 and 16 – Witness 5

The panel considered that this aspect of the statement clearly suggests that it is hearsay evidence. It considered that, on the basis of relevance and fairness, this evidence is hearsay, that it is not relevant. In light of the above, the panel decided not to admit this evidence. However, it decided to keep in the sentence '*I know that [Miss Campbell] was a very good nurse at the time and she was good at her job*' of paragraph 16 as this is the direct and expressed view of Witness 5.

Having made the above decisions in relation to admissibility, the panel acknowledges that where it has ruled certain passages as admissible it can, upon hearing the evidence during the hearing, ascribe what weight it thinks it to those passages.

The panel did consider whether, having already read evidence now deemed inadmissible, it was put in a position where it may be biased, but determined that it was not. The panel considered the test under *Porter v Magill* [2001] UKHL 67. The test states:

'A panel must first ascertain all circumstances which have a bearing on the suggestion that a panel is biased. It must then ask whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the tribunal was biased.'

The panel concluded that the two passages and the investigation conclusion had been ruled inadmissible but that a fair minded and informed observer would conclude that there is no bias. The *Porter v Magill* test was not satisfied. Further, the panel is a professional tribunal and can safely put the ruled inadmissible passages out of its mind.

Ms Hazlewood made an application to read the statements of three NMC witnesses who are not attending this hearing. The panel decided not to adjudicate on this application, at this stage, but to hear it following and in light of the evidence of the five live NMC witnesses. The panel could find no prejudice either to the NMC or Miss Campbell in reserving this application until later in this hearing. At this later stage, the panel can hear fuller submissions as to whether the factors in *Thorneycroft* are met or not.

Decision and reasons on application to admit the written statements of the three remaining NMC witnesses

The panel heard a further application, at the invitation of the panel, from Ms Hazlewood under Rule 31 of the Rules to admit the written statements of Witness 6, 7 and 8 and the

supplementary statement of Witness 6 into evidence. These witnesses were not present at this hearing nor due to be called by the NMC to give evidence. She referred the panel to the test in *Thorneycroft*.

Ms Hazlewood submitted that in relation to Witness 6, their statement relates to charge 1 as does the investigation undertaken by Witness 1. Witness 1 has given live evidence during this hearing. She submitted that the statement of Witness 6 is not sole or decisive, and that their evidence has not been challenged by Miss Campbell. She submitted that there is no evidence that Witness 6's statement has been fabricated in any way. She submitted that the panel are aware of the other witnesses that also speak to charge 1.

Ms Hazlewood submitted that in relation to Witnesses 7 and 8, their statements speak to charge 11. She reminded the panel that Witness 1 and Witness 3 also speak to this charge. She submitted that the statements of Witness 7 and 8 are not sole or decisive, and that their evidence has not been challenged by Miss Campbell. She submitted that there is no evidence that Witness 7 and 8's statements have been fabricated in any way.

Ms Hazlewood submitted that this evidence should be adduced by way of reading the written statements of all three witnesses. She submitted that the evidence of these witnesses speaks to the relevant charges, which the panel need to decide upon. She submitted that, in light of the above, it is therefore relevant, fair and admissible to admit the witness statements as read.

Ms Hazlewood submitted that it is 'unclear' what steps may or may not have been taken to secure these witnesses' attendance for this hearing, or whether Miss Campbell had been given prior notice of this application. She told the panel, in line with her earlier hearsay application in relation to Witnesses 6, 7 and 8, that the NMC 'took the view that these witnesses do not add anything to the case', and therefore they have not been called to give live evidence.

The panel accepted the advice of the legal assessor.

The panel carefully read the witness statements of Witnesses 6, 7 and 8 and the supplementary witness statement of Witness 6. The panel had careful regard to the factors set out at paragraphs 45 and 56 in the judgment of *Thorneycroft*. The panel noted that the admission of a statement of an absent witness should not be regarded as a routine matter. The Fitness to Practise rules require a panel to consider the issue of fairness before admitting the evidence. The panel also noted that the fact that the absence of a witness can be reflected in the weight to be attached to their evidence is a factor to weigh in the balance, but it will not always be a sufficient answer to the objection to admissibility. The panel took these two factors from *Thorneycroft* into account and then further applied the other *Thorneycroft* factors when considering each of the witnesses in this application separately.

Witness 6

Having carefully read Witness 6's statement and supplementary statement, the panel decided that their evidence is relevant to charge 7.

The panel next considered the fairness of admitting the two statements of Witness 6. In considering the question of fairness, the panel gave close regard to the issues in respect of charge 7 and the other evidence which has been adduced by the NMC to date.

Witness 6 refers to completing a morning medication check for a patient who had arrived from another hospital the previous evening. The panel considered that Witness 6 is the only person that gives direct evidence of this issue, Witness 1 merely reports the facts as a part of her investigation. The panel considered that this is sole and decisive evidence, as Witness 6 is the only one that identified and reported the issue of the alleged missing medication. The panel rejects the submission that this evidence is adduced by Witness 1, as she reports the finding, rather than giving direct evidence on it. Witness 1 also does not mention the name of the pharmacy technician. The panel decided that the NMC has not provided a good and cogent reason as to why Witness 6 is not present to give live

evidence. Further, the NMC did not provide the panel with any information as to any reasonable steps which it undertook to secure the attendance of Witness 6. Likewise, the NMC provided no information that it had put Miss Campbell on notice that this application was to be made. The panel therefore decided, on the balance of fairness, not to admit this statement.

Witness 7

The panel having carefully read Witness 7's statement noted that they confirmed that this witness was one of the people present who completed the reconciliation of the CD's. This witness had identified their signature on the Drug Record book which has been provided to the panel as part of the NMC's case. The panel considered that this evidence is relevant and there would be no unfairness in admitting this evidence as it relies upon a contemporaneous document which appears to be demonstrably reliable. It considered that this statement is not sole and decisive evidence. The panel therefore decided to admit this statement but would give it what it deemed appropriate weight when it considers it upon deciding the facts of the case.

Witness 8

Having carefully read Witness 8's statement, the panel decided that their evidence is relevant to charge 11.

The panel next considered the fairness of admitting the statement of Witness 8. In considering the question of fairness, the panel gave close regard to the issues in respect of charge 11 and the other evidence which has been adduced by the NMC to date.

The panel considered that Witness 8's statement goes to charges 1 and 11 in this case. Witness 8 had noticed some medication missing after completing a check with Miss Campbell on 16 September 2019. This witness is the only person who gives evidence on this matter as Witness 1 merely refers to it being reported to her as a part of her

investigation. Therefore, this is sole and decisive evidence of this issue. The panel considered that Witness 8 also gives evidence to the allegation that Miss Campbell went to Oasis Unit (Oasis) to obtain a box of Codeine. This aspect is not sole and decisive evidence as Witness 8 is not the only person that provides evidence on this matter. The panel decided that the NMC has not provided a good and cogent reason as to why Witness 8 is not present to give live evidence. Further, the NMC did not provide the panel with any information as to any reasonable steps which it undertook to secure the attendance of Witness 8. Likewise, the NMC provided no information that it had put Miss Campbell on notice that this application was to be made. The panel therefore decided, on the balance of fairness, not to admit this statement.

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

During the course of hearing the NMC witnesses oral evidence, the panel of its own volition decided that parts of this case be held in private on the basis that proper exploration of Miss Campbell's case involves reference to some private matters. The panel made this decision pursuant to Rule 19 of the Rules.

Background

The allegations arose whilst Miss Campbell was employed as a registered nurse by Rochdale Infirmary ('the Hospital').

Miss Campbell worked as a nurse in both Wolstenhome Unit ('Wolstenhome') and Oasis and she worked there until 23 January 2020.

During the period between February 2019 and October 2019, it was identified that there were numerous instances of medication going missing from the CD cupboard, ward stock, and patient lockers in Wolstenhome and Oasis units.

It is alleged that Miss Campbell removed medications without recording them in line with the Hospital's policy between February and June 2019, 3 and/or 4, 10, 11, 16 September 2019 and 7 October 2019, including removing them from patient's lockers.

It is also alleged that Miss Campbell was dishonest on these occasions in relation to the medications being removed.

Decision and reasons on facts

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 Hazlewood on behalf of the NMC.

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

- Witness 1: Former Lead Nurse; the Hospital
- Witness 2: Staff Nurse; the Hospital
- Witness 3: Former Pharmacist Technician; the Hospital
- Witness 4: Former Specialist Clinical Pharmacist; the Hospital
- Witness 5: Staff Nurse; the Hospital

The panel admitted the written statement of the following witness:

- Witness 7: Staff Nurse; the Hospital

The panel accepted the advice of the legal assessor.

The panel has drawn no adverse inference from the non-attendance of Miss Campbell. The panel took into account Miss Campbell's replies to questions put to her during the local investigation.

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 carefully considered the charges in light of all of the admissible evidence. The panel in line with its earlier decision on the admissibility of evidence disregarded all evidence that it ruled inadmissible, including the conclusion of Witness 1's investigation.

The panel noted that in respect of the entirety of charges 1, 4, 7, 9, 11 and 13 that there is no direct evidence of Miss Campbell taking any medication. The NMC's case relies upon circumstantial evidence. In particular, when considering charges 4, 7, 9, 11 and 13, the NMC's case, based on the methodology in Witness 1's investigation and her evidence, is that there is evidence to suggest that although several nurses worked during the time medication went missing, Miss Campbell was the only nurse who worked on every such occasion. Further, the NMC seek to establish, though Witness 1's investigation and evidence, that no medication went missing from the ward when Miss Campbell was either not on duty or [PRIVATE].

A circumstantial case is one which depends for its cogency on the unlikelihood of coincidence. The NMC seek to prove separate events and circumstances which can be explained rationally only by the 'guilt' of Miss Campbell. The circumstances of this case involve presence by being on duty (or not), opportunity and proximity to the critical events.

The question for the panel is whether the facts as it finds them to be, drive it safely to the conclusion that each charge is proved on the balance of probabilities.

The panel noted a prosecution based upon circumstantial evidence, and where there is no clinching or explanatory piece of evidence, must be carefully examined. The panel sought not to speculate or attempt to fit the evidence to a particular theory but to draw proper inferences from reliable evidence.

The panel noted that charges 2, 3, 5, 6, 8, 10, 12, 14 and 15 allege dishonesty. Concerns that bring into question a nurse's honesty are considered very serious and, as such, require strong supportive evidence. The panel bore in mind *Lavis v NMC* [2014] EWHC 4083 (Admin) paragraphs 58 to 60 and 67, where the High Court reminded panels of the need for cogent evidence in order to make a finding of dishonesty, and of the need to consider any other possible explanation for the conduct in question.

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

Charge 1

That you, a registered nurse:

- 1) On unknown dates between February 2019 and June 2019 whilst working on Oasis Unit ('Oasis'):
 - a) Regularly went from Oasis Unit to Wolstenhome Unit to obtain Codeine and/or Co-codamol tablets stating that Oasis had run out of their stock allocation when you knew this was not accurate.
 - b) During this period you took for your own private use up to 336 Codeine and 712 Co-codamol tablets.

This charge is found NOT proved in its entirety.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and Witness 2.

The panel first considered the wording of charge 1a. It relates to a substantial period of time between February and June 2019, and there is limited evidence dealing with that period before the panel. That limited evidence, taken as its highest, is that Miss Campbell would come over from Oasis to Wolstenhome and would ask Witness 2 for a single box of Codeine. Witness 2 stated that he would give the keys to the cupboard to Miss Campbell and that she would then come back to him with the keys and thank Witness 2. At no stage of Witness 2's evidence did he say that she had taken anything other than one box of Codeine at each such visit. A box of codeine contains 28 tablets and Witness 2 said that this occurred on two or three occasions during this period.

The panel noted that, whilst charge 1b is a separate charge, it nevertheless clearly is part of that time period. The NMC have alleged that a substantial amount of Codeine was taken (336 tablets), which would amount to approximately 12 boxes. This substantial amount of Codeine is not supported by Witness 2's evidence as Witness 2's evidence only supports two to three boxes being taken by Miss Campbell to Oasis. The panel acknowledges that Oasis is a dementia unit and that the need for Codeine is not high, but nevertheless there was no evidence to suggest that there was *no* need or requirement for Codeine and/or Co-codamal. The panel heard from Witness 2, Witness 3 and Witness 5 that it was not unusual that staff from one unit to borrow drugs from another unit if they had run out. The panel therefore decided that there would be nothing unusual about Codeine going from Wolstenhome to Oasis on occasions and there was insufficient evidence before it that Miss Campbell had taken up to 12 boxes of Codeine. The panel heard no evidence concerning Co-codamal.

The panel noted that there was an audit undertaken by the pharmacy, which indicated that large amounts of Codeine and Co-codamal were unaccounted for on Oasis between 25 February and 16 June 2019.

The panel decided that the word 'regularly' when taken with the amount of tablets that went missing, 336 tablets of Codeine and 712 tablets of Co-codamal, suggests multiple visits to Wolstenhome, but evidence of two or three visits over a period of four months would be occasional, rather than regular.

The panel has heard evidence from Witness 2, Witness 3 and Witness 5 that it was a regular occurrence that other nurses would take medication from the cupboard on other wards, as that was regular practice between the wards, but there is insufficient direct evidence to suggest that it was Miss Campbell who took this substantial amount of medication.

The panel therefore decided that, in light of the above, it finds charge 1a and 1b not proved.

Charge 2

That you, a registered nurse:

- 2) Your actions at charge 1a were dishonest in that you knew Oasis had not run out of its stock allocation.

This charge is found NOT proved.

In reaching this decision, the panel considered that charge 2 falls away, based on the findings of charge 1.

The panel therefore finds charge 2 not proved.

Charge 3

That you, a registered nurse:

- 3) Your actions at charge 1b were dishonest in that you knew that the Codeine and/or Co-codamol belonged to Oasis and/or Wolstenholme and that you were not permitted to use it except in fulfilment of your duties as a nurse.

This charge is found NOT proved.

In reaching this decision, the panel considered that charge 3 falls away, based on the findings of charge 1.

The panel therefore finds charge 3 not proved.

Charge 4a

That you, a registered nurse:

- 4) On 3 and/or 4 September 2019:
 - a) Accessed the controlled drugs cupboard without a second checker.

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1.

The panel considered that during Witness 1's oral evidence, she was asked if the signature in the CD book for an entry at 22:05 on 3 September 2019 was Miss Campbell's, and she confirmed that it was. The panel had sight of a copy of the CD book which clearly

shows Miss Campbell's signature at an entry at 22:05 hours. It noted that there is also the signature of a second checker for that entry.

The panel noted that all of the CD's were checked by Miss Campbell and the second nurse at 04:00 hours, which indicated that the medication count was correct at that time. There were three occasions in which drugs were dispensed by Miss Campbell alongside a second checker that shift, which is contrary to what has been alleged.

The panel considered that there is no evidence that Miss Campbell accessed the CD cupboard on her own without a second checker during that shift. Miss Campbell was not the nurse in charge on that shift and she would have had to have obtained the CD keys from the nurse in charge, but the panel did not hear any evidence of this.

The panel considered that there is also nothing before it to suggest that going into the CD cupboard always requires a second checker, as the only time a second checker is needed is when medication is being dispensed for a patient. The panel had sight of the Controlled Drugs Policy for the use by Pennine Acute Intermediate Care Units which set out the procedure for the administration of controlled drugs with a second checker, but which did not preclude going to the CD cupboard without a second checker.

The panel therefore decided that, in light of the above, it finds charge 4a, on the balance of probabilities, not proved.

Charge 4b

That you, a registered nurse:

- 4) On 3 and/or 4 September 2019:

- b) Dispensed liquid Oromorph (18.5mls) and Oxynorm (32mls) and failed to document who the medication had been administered to by reference to the patient, the date, the time and the dose given.

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and Witness 2.

The panel heard from Witness 2 that the liquid medication, Oramorph, appeared to be less than it should have been on the morning of 4 September 2019. Witness 2 informed the Ward Manager of the apparent discrepancy in the amount of Oramorph and consequently both Oramorph and Oxynorm were measured. It was found that 18.5mls of Oramorph and 32mls of Oxynorm were missing from their bottles.

The panel noted the entry at 22:05 hours on 3 September 2019 by Miss Campbell and considered this to be in line with the CD policy. Similar to charge 4a, and on the balance of probabilities, the panel cannot find any evidence that the medication was taken by Miss Campbell. It found that there is evidence indicating that there was medication present that subsequently went missing, as well as evidence that there was no entry in the CD book accounting for it, and that it was not given to a particular patient. However, there is insufficient direct evidence to prove that it was Miss Campbell who removed the medication. The panel also could not establish that Miss Campbell failed to document who the medication was given to. It noted that there were also a number of other nurses on shift during the time in which the medication went missing.

In light of the above, the panel therefore finds charge 4b not proved.

Charge 4c

That you, a registered nurse:

- 4) On 4 September 2019:
 - c) You took the drugs for your own private use.

This charge is found NOT proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

As previously highlighted in charges 4a and 4b, the panel considered that, given there were seven other nurses on duty during this time period of the medication being checked and the loss being discovered, there is insufficient direct evidence to suggest that Miss Campbell was the only person who had access to this medication.

In light of the above, the panel therefore finds charge 4c not proved.

Charge 5

That you, a registered nurse:

- 5) Your actions at 4a and/or b were dishonest in that you accessed the controlled drugs cupboard without a second checker and/or dispensed Oromorph and/or Oxynorm without creating appropriate records to conceal your actions in taking same for your private use.

This charge is found NOT proved.

In reaching this decision, the panel considered that charge 5 falls away, based on the findings of charge 4.

The panel therefore finds charge 5 not proved.

Charge 6

That you, a registered nurse:

- 6) Your actions at charge 4c were dishonest in that you knew that the Oromorph and/or Oxynorm belonged to Oasis Unit and that you were not permitted to use it expect in fulfilment of your duties as a nurse.

This charge is found NOT proved.

In reaching this decision, the panel considered that charge 6 falls away, based on the findings of charge 4.

The panel therefore finds charge 6 not proved.

Charge 7a

That you, a registered nurse:

- 7) On 10 September 2019:
 - a) Removed one strip (14 tablets) of Codeine from Patient A's locker without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and Witness 5.

The panel considered that it is more likely than not that Patient A arrived with the correct medication when they were brought onto the ward. Witness 5 stated that she had put the bag of medication in Patient A's locker, although the contents were not checked by her at that time, as it was not a routine procedure other than checking for controlled and recorded drugs. Codeine was not a recorded drug on Wolstenhome at this time.

The panel heard evidence that Miss Campbell administered Codeine to Patient A during that shift, but there is no evidence that indicates how many Codeine tablets were in the locker in the first place, as no check had been undertaken. Witness 1 gave evidence that Codeine was found to be missing when a pharmacist did a check at 08:00 hours on 11 September 2019.

The panel considered that it has heard evidence that it was common for nurses to borrow medication from other patients lockers, including whole strips, providing that it was not a CD.

Miss Campbell was the nurse allocated to look after Patient A during that shift and had access to the Codeine. The panel noted that she would have been on duty with at least one other nurse overnight. There were also nurses that came in on a late shift, and it was Witness 1's evidence that there was the possibility of four or five other nurses during this time period.

The panel noted that there is no direct evidence of Miss Campbell removing the strip of Codeine from Patient A's locker without clinical justification. However, the panel carefully considered the circumstantial evidence and the cogency on the unlikelihood of coincidence. Miss Campbell was on duty and, on the evidence before the panel, had opportunity to remove the Codeine. The panel noted the investigation by Witness 1 who provided evidence that although several nurses were working on 10 September 2019 and

in respect of charges 9, 11 and 13, Miss Campbell was the only nurse who worked on every occasion when medication went missing. The panel had careful regard to the staffing rotas to ensure that Witness 1 was correct in this assertion. In these circumstances, the panel decided that this was cogent evidence of the unlikelihood of coincidence.

Therefore, on the balance of probabilities, the panel decided from the circumstantial evidence that charge 7a is proved.

Charge 7b

That you, a registered nurse:

7) On 10 September 2019:

b) You took the tablets for your own private use.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel having found charge 7a proved, decided to find charge 7b proved on the balance of probabilities. In reaching this decision, the panel noted within charge 7b that Miss Campbell took the tablets 'for your own private use'. The panel ascribed the ordinary meaning of this phrase in that 'for your own private use' does not mean consumption but Miss Campbell taking control of those tablets and using them for her own private purposes.

In light of the above, on the balance of probabilities, the panel found charge 7b proved.

Charge 8

That you, a registered nurse:

- 8) Your actions at charge 7b were dishonest in that you knew the medication referred to belonged to Patient A and you did not have permission to take it for your own private use.

This charge is found proved.

In reaching this decision, the panel carefully considered the test in *Ivey v Genting Casinos (UK) Limited T/A Crockfords* [2017] UKSC67. The panel noted the replies given by Miss Campbell to questions during the local investigation. The panel decided that both limbs of the test in *Ivey* are satisfied and that by the standards of ordinary decent people, the taking of medication for Miss Campbells' own private use is dishonest.

The panel therefore finds, on the balance of probabilities, charge 8 proved.

Charge 9a

That you, a registered nurse:

- 9) On 11 September 2019:
 - a) Removed four strips (56 tablets) of Codeine from a Patient B's locker without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1 and Witness 5.

The panel noted Witness 1's exhibited Datix entry, in which it is stated that the pharmacist had put the medication in the patient's locker on 11 September 2019, and later discovered that two boxes of Codeine had gone missing when undertaking the check at 08:30 hours on 12 September 2019.

Witness 5 stated that she had counted the Codeine that was in Patient B's locker together with the ward sister before finishing her late shift on 11 September 2019, and at that time the Codeine was correct.

The panel heard evidence that Miss Campbell was on duty on the night shift of 11 September 2019 together with at least two other staff members. It also heard evidence of the medication being present and evidence of it then going missing.

The panel noted that there is no direct evidence of Miss Campbell removing the four strips of Codeine from Patient B's locker without clinical justification. However, the panel carefully considered the circumstantial evidence and the cogency on the unlikelihood of coincidence. Miss Campbell was on duty and, on the evidence before the panel, had opportunity to remove the Codeine. The panel noted the investigation by Witness 1 who provided evidence that although several nurses were working on 11 September 2019 and in respect of charges 7, 11 and 13, Miss Campbell was the only nurse who worked on every occasion when medication went missing. The panel had careful regard to the staffing rotas to ensure that Witness 1 was correct in this assertion. In these circumstances, the panel decided that this was cogent evidence of the unlikelihood of coincidence.

In light of the above the panel finds, on the balance of probabilities, charge 9a proved.

Charge 9b

That you, a registered nurse:

9) On 11 September 2019:

b) You took the tablets for your own private use.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel having found charge 9a proved, decided to find charge 9b proved on the balance of probabilities. In reaching this decision, the panel noted within charge 9b that Miss Campbell took the tablets 'for your own private use'. The panel ascribed the ordinary meaning of this phrase in that 'for your own private use' does not mean consumption but Miss Campbell taking control of those tablets and using them for her own private purposes.

In light of the above, on the balance of probabilities, the panel found charge 9b proved.

Charge 10

That you, a registered nurse:

10) Your actions at charge 9b were dishonest in that you knew the medication referred to belonged to Patient B and you did not have permission to take it for your own private use.

This charge is found proved.

In reaching this decision, the panel carefully considered the test in *Ivey v Genting Casinos (UK) Limited T/A Crockfords* [2017] UKSC67. The panel noted the replies given by Miss Campbell to questions during the local investigation. The panel decided that both limbs of the test in *Ivey* are satisfied and that by the standards of ordinary decent people, the taking of medication for Miss Campbells' own private use is dishonest.

The panel therefore finds, on the balance of probabilities, charge 10 proved.

Charge 11a

That you, a registered nurse:

11) On 16 September 2019:

- a) Removed half a strip (7 tablets) of Codeine belonging to Patient C from the Recorded Drugs cupboard without clinical justification.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1.

Witness 1 stated that the Codeine for Patient C was counted and signed for as correct on 16 September 2019. It was entered into the CD cupboard as Codeine at this point had been designated as a recorded drug since 12 September 2019. This re-designation of Codeine was as a result of Witness 1 responding to missing Codeine and, as a consequence, putting that medication on high surveillance from 12 September 2019. When the medication was checked by the pharmacist on 17 September 2019, it was discovered that a strip of seven Codeine tablets were missing. Miss Campbell had been on duty during the night shift of 16 September 2019 together with other staff.

The panel noted that there is no direct evidence of Miss Campbell removing half a strip of Codeine belonging to Patient C from the recorded drugs cupboard without clinical justification. However, the panel carefully considered the circumstantial evidence and the cogency on the unlikelihood of coincidence. Miss Campbell was on duty and, on the evidence before the panel, had opportunity to remove the Codeine. The panel noted the investigation by Witness 1 who provided evidence that although several nurses were working on 16 September 2019 and in respect of charges 7, 9, and 13, Miss Campbell was the only nurse who worked on every occasion when medication went missing. The panel had careful regard to the staffing rotas to ensure that Witness 1 was correct in this assertion. The panel noted that in respect of this charge, Witness 1 had re-designated Codeine as a recorded drug on the ward and that this medication had been put on high surveillance. In these circumstances, the panel decided that this was cogent evidence of the unlikelihood of coincidence.

Therefore, on the balance of probabilities, the panel decided from the circumstantial evidence that charge 11a is proved.

Charge 11b

That you, a registered nurse:

11) On 16 September 2019:

b) You took the tablets for your own private use.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel having found charge 11a proved, decided to find charge 11b proved on the balance of probabilities. In reaching this decision, the panel noted within charge 11b that Miss Campbell took the tablets 'for your own private use'. The panel ascribed the ordinary meaning of this phrase in that 'for your own private use' does not mean consumption but Miss Campbell taking control of those tablets and using them for her own private purposes.

In light of the above, on the balance of probabilities, the panel found charge 11b proved.

Charge 12

That you, a registered nurse:

- 12) Your actions at charge 11b were dishonest in that you knew the medication referred to belonged to Patient C and you did not have permission to take it for your own private use.

This charge is found proved.

In reaching this decision, the panel carefully considered the test in *Ivey v Genting Casinos (UK) Limited T/A Crockfords* [2017] UKSC67. The panel noted the replies given by Miss Campbell to questions during the local investigation. The panel decided that both limbs of the test in *Ivey* are satisfied and that by the standards of ordinary decent people, the taking of medication for Miss Campbells' own private use is dishonest.

The panel therefore finds, on the balance of probabilities, charge 12 proved.

Charge 13

That you a registered nurse:

13) On 7 October 2019:

- a) Removed two strips (28 tablets) of Codeine belonging to Patient D upon his transfer to Wolstenholme from Oldham Hospital without clinical justification.
- b) Failed to book Patient D's Codeine into the Recorded Drugs Cupboard.
- c) Failed to complete a Datix incident report regarding the alleged loss of the Codeine.
- d) Failed to report or notify anyone of the alleged loss of the Codeine
- e) You took the tablets for your own private use.

This charge is found proved in its entirety.

In reaching this decision, the panel took into account the oral and documentary evidence of Witness 1, Witness 3 and Witness 4.

The panel was satisfied from Witness 4's evidence that the Codeine was in Patient D's bag of medication when they had left Oldham Hospital. Upon arrival to Wolstenhome, the medication bag was unpacked, and the panel heard evidence from Witness 1 that Patient D's [PRIVATE] had stated that they gave the bag to a nurse without having looked inside it. This was after the Hospital introduced the new policy regarding Codeine being a recorded drug. The medication was found to be missing by Witness 3 the following morning. In a local interview with Miss Campbell, she accepted that she was a nurse that received Patient D, but asserted that Codeine was missing along with Ranitidine and eye drops.

The panel determined that, on the booking sheet/patient notes, there was no indication that any medication was missing from the bag upon admission.

The panel considered, based on the evidence before it, that Patient D's Codeine was not booked into the Recorded Drugs Cupboard, that there is no evidence of a Datix report, and Witness 1 also confirmed that no one was informed or notified of the loss of Codeine.

The panel took into account the email regarding the new medication policy, as well as the memo, in which Miss Campbell was included within this correspondence. This was not Miss Campbell's first shift after the addition of codeine as a recorded drug and there is some evidence in Witness 1's exhibits that the changes had been explicitly discussed with Miss Campbell by a colleague. The panel considered that Miss Campbell would have therefore known about the change in policy as well as her duties to complete the tasks in charge 13b, c and d, however she did not undertake this.

In relation to charge 13e, the only logical reason for Miss Campbell taking the medication was for her own private use. Having been interviewed about this matter locally, Miss Campbell had the opportunity to admit as to whether she had possibly lost the medication, but she did not. The panel considered that, on the balance of probabilities, Miss Campbell took the medication for her own use as there is no other reasonable explanation, and no justification for moving the tablets.

In light of the above, on the balance of probabilities, the panel found charge 13 proved in its entirety.

Charge 14

That you, a registered nurse:

- 14) Your actions at charges 13b and/or c and/or d were dishonest in that you failed to appropriately record the codeine in the Recorded Drugs book and/or record the alleged loss of the codeine on a Datix incident report and/or notify anyone of the

alleged loss of the codeine to conceal your actions in taking same for your private use.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel considered that the subject of Codeine would have been largely discussed on the units considering the circumstances, and staff would have been aware of the policy change.

The panel noted that charges 13b, c and d are worded in terms of a 'failure', and a failure requires the NMC to prove that Miss Campbell did not complete those tasks as highlighted in the charges above. It is clear from the evidence before the panel that she did not do so.

The panel considered that there was a duty on Miss Campbell, considering Codeine had been made a recorded drug, and so the recorded drugs policy applied. Miss Campbell would have been aware of this as per the email and memo highlighted previously. She had failed to undertake any of those duties in charge 13b, c and d, not because she was unaware of the policy change, but because she was trying to conceal her actions.

The panel considered that this would be seen as dishonest by a reasonable person in omitting to undertake those duties. The panel has seen Miss Campbell's account, which it has rejected in terms of the circumstances of charge 13b, c and d.

In reaching this decision, the panel carefully considered the test in *Ivey v Genting Casinos (UK) Limited T/A Crockfords* [2017] UKSC67. The panel decided that both limbs of the test in *Ivey* are satisfied and that by the standards of ordinary decent people, the taking of medication for Miss Campbells' own private use is dishonest.

In light of the above, on the balance of probabilities, the panel therefore finds charge 14 proved.

Charge 15

That you, a registered nurse:

15) Your actions at charge 13e were dishonest in that you knew the medication referred to belonged to Patient D and you did not have permission to take it for your own private use.

This charge is found proved.

In reaching this decision, the panel took into account the oral and documentary evidence before it.

The panel decided that, for the same reasons set out in charge 14, Miss Campbell's actions in charge 15 were dishonest.

In light of the above, on the balance of probabilities, the panel therefore finds charge 15 proved.

In finding charges 7, 9, 11 and 13 proved for the above reasons, the panel when considering the circumstantial evidence, also took into account Witness 1's investigation and evidence concerning periods when Miss Campbell was either not on duty or was on [PRIVATE]. The panel noted that Miss Campbell was off duty between 12 September 2019 and 16 September 2019, and that no medication went missing during this period. Further, Miss Campbell was on [PRIVATE] between 21 September 2019 and 4 October 2019 and likewise, no medication went missing during this time. The panel decided that this was strong supportive evidence to the findings above which, in part, rely upon the

coincidence that medication went missing on each of the dates in the charges found proved.

Fitness to practise

Having reached its determination on the facts of this case, the panel then moved on to consider, whether the facts found proved amount to misconduct and, if so, whether Miss Campbell'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 has borne in mind that there is no burden or standard of proof at this stage and it has therefore exercised its own 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, Miss Campbell's fitness to practise is currently impaired as a result of that misconduct.

Submissions on misconduct

Ms Hazlewood invited the panel to take the view that the facts found proved amount to misconduct. The panel had regard to the terms of 'The Code: Professional standards of practice and behaviour for nurses and midwives (2015' (the Code) in making its decision.

Ms Hazlewood identified the specific, relevant standards where Miss Campbell's actions amounted to misconduct.

Ms Hazlewood submitted that there is no burden of proof on the NMC or Miss Campbell at this stage, and it is a matter for the panel's judgement. She referred to *Roylance v General Medical Council (No. 2)* [2000] 1 AC 311 in defining misconduct. She submitted that on the charges which the panel has found proved, there are multiple acts or omissions which can amount to misconduct.

Ms Hazlewood referred to the Code and submitted that the following sections of the code apply: Sections one, three, four and 10.

Ms Hazlewood submitted that the panel will be aware that the charges found proved engage a number of those sections of the Code as set out. In relation to patient care, charges 7, 8, 9, 10, 11, 12, 13 and 14 all pertain to drugs that went missing with regard to specific patients under Miss Campbell's care.

Ms Hazlewood submitted that the charges found proved are both serious in nature individually and cumulatively, and Miss Campbell's actions fell far short of what would be expected of a registered nurse. She submitted that the public would expect a professional to uphold such standards of the profession.

Ms Hazlewood invited the panel to take the view that the facts found proved amount to misconduct.

Submissions on impairment

Ms Hazlewood 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 case of *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) and Grant* [2011] EWHC 927 (Admin).

Ms Hazlewood submitted that the concerns in Miss Campbell's case that have been found proved raise fundamental questions about her trustworthiness as a registered professional. She submitted that the panel are to have regard to the need to protect the public and also the wider public interest, including the need to declare and maintain proper standards when maintaining public confidence in the profession and the NMC as the regulator.

Ms Hazlewood submitted that, given the seriousness of the facts found proved, she invited the panel to make a finding of impairment. She referred to the case of *CHRE V NMC and Grant* and the four-stage test. She submitted that all limbs of *Grant* are engaged.

Ms Hazlewood submitted that there is a risk of harm to those in Miss Campbell's care and, in light of the above, the panel are invited to make a finding of impairment on public protection grounds. The panel are also invited to make a finding of impairment on public interest grounds, as this is necessary in order to maintain public confidence in the profession. There would be reputational damage as a result of Miss Campbell's conduct and a member of the public would be concerned should a finding of impairment not be made.

The panel accepted the advice of the legal assessor.

Decision and reasons on misconduct

The panel noted that the threshold for establishing misconduct is relatively high. It means professional misconduct must be of a sufficiently serious nature to be capable of calling into question a nurse's fitness to practice.

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

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

'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:

- 10.2** *identify any risks or problems that have arisen and the steps taken to deal with them, so that colleagues who use the records have all the information they need*
- 10.3** *complete all records accurately and without any falsification, taking immediate and appropriate action if you become aware that someone has not kept to these requirements*

Promote professionalism and trust

You uphold the reputation of your profession at all times. You should display a personal commitment to the standards of practice and behaviour set out in the Code. You should be a model of integrity and leadership for others to aspire to. This should lead to trust and confidence in the profession from patients, people receiving care, other health and care professionals 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...*
- 20.3 be aware at all times of how your behaviour can affect and influence the behaviour of other people'*

The panel appreciated that a breach or breaches of the Code do not automatically result in a finding of misconduct.

Whilst the panel found charges 13b to 13d in isolation as being incapable of amounting to misconduct, the panel decided that taking all charges found proved into account, that the threshold for misconduct has been established. Cumulatively, the panel found that Miss Campbell's actions are so serious as to amount to misconduct. Miss Campbell took significant amounts of medication from the Hospital and patients on multiple occasions and in doing so was dishonest. The panel considered that Miss Campbell's actions fell far below of the standards expected of a registered nurse. It considered that an informed member of the public would be seriously concerned by Miss Campbell's actions.

The panel found that Miss Campbell'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, Miss Campbell'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 the wider public must be able to trust nurses. 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. 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 guidance in the fifth Shipman report which is 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 considered that all limbs of *Shipman* are engaged in this case.

In respect of limb a) of *Shipman*, the panel noted that whilst there was no evidence of Miss Campbell's actions putting patients at actual unwarranted harm there was, in its professional view, an unwarranted risk of harm in that Miss Campbell was taking medication out of the ward and the Hospital, and thereby depleting stocks which could create a risk to patients. Further, she took medication from a patient's personal stock which could have put that patient at risk upon discharge.

It found that Miss Campbell's misconduct has breached the fundamental tenets of the nursing profession by breaching the Code, and therefore has brought the reputation of the nursing profession 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 the evidence before it and the submissions by Ms Hazlewood. It noted that the only information it has from Miss Campbell is her interview responses during the local investigation. The panel has no information before it that demonstrates Miss Campbell's understanding of her actions and the steps she may have taken to address the concerns. There is no evidence of Miss Campbell's insight, remorse or remediation before the panel, as well as her understanding of the impact her actions could have had on patients and the wider public, and so it concluded that there is still a high risk of repetition in this case.

The panel considered whether there was a risk of harm to patients in this case. It heard evidence from the NMC witnesses that Miss Campbell was a good nurse. The panel considered that this is a case of theft and dishonesty, and there are no clinical practice issues present in this case. However, whilst there has been no evidence heard of actual harm caused to patients, the panel was not able to rule out the risk of harm entirely, due to the theft of medication and this potentially not being available for patients that needed that

medication. Miss Campbell also took the medication from patient's individual lockers and patients could have been discharged home without the right medication. The panel therefore concluded that this poses a risk of harm to patients. The panel has not heard any information from Miss Campbell about any efforts made to address the concerns or an explanation as to why she took the medication.

The panel is of the view that there is a high risk of repetition based on its reasons above. The panel therefore decided that a finding of impairment is necessary on the grounds of public protection.

The panel bore in mind 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 because a well-informed member of the public would be concerned, should a finding of impairment not be made in this case, when considering multiple thefts of drugs and dishonesty. The panel concluded that public confidence in the profession would be undermined if a finding of impairment were not made in this case and therefore also finds Miss Campbell's fitness to practise impaired on the grounds of public interest.

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

Sanction

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

Submissions on sanction

Ms Hazlewood informed the panel that in the Notice of Hearing, dated 9 January 2023, the NMC had informed Miss Campbell that it would seek the imposition of a striking-off order if it found her fitness to practise currently impaired by reason of dishonesty.

Ms Hazlewood referred to the Sanctions Guidance (SG). She submitted that the aggravating factors of this case are:

- An abuse of a position of trust;
- A pattern of misconduct over a period of time;
- Miss Campbell's conduct could have caused patient harm if medication was not made available to patients when required;
- Miss Campbell has failed to engage with the NMC's proceedings; and
- There is no evidence of reflection or insight by Miss Campbell, and she denied the allegations during the local investigation.

Ms Hazlewood submitted that the only mitigating factor of the case is:

- Miss Campbell has had no previous regulatory concerns against her.

Ms Hazlewood submitted that no further action and a caution order would not be appropriate in this case, given the lack of engagement from Miss Campbell, as well as the seriousness of the charges found proved. She submitted that these sanctions would not protect the public nor would they be in the wider public interest, and this is not a case where the misconduct is at the lower end of the scale.

Ms Hazlewood submitted that a conditions of practice order would not be appropriate, given that the concerns in this case are so serious. She submitted that it would not be proportionate, as it would not address the seriousness of the concerns, and supervisory conditions could not be formulated in this case.

Ms Hazlewood submitted that a suspension order would not be appropriate, and it would not address the long-term risk and lack of insight from Miss Campbell. She submitted that none of the points within the SG apply in this case with regards to a suspension order. She submitted that this was not a single incident of misconduct, that the panel may be of the view that Miss Campbell's lack of engagement indicates some attitudinal concerns, that the concerns occurred over a period of time, and that there has been no evidence of insight shown.

Ms Hazlewood submitted that Miss Campbell's conduct was a serious departure of the standards expected of a registered nurse, and that there are numerous breaches of the Code. She submitted that a striking-off order would be appropriate, as it would meet the wider public interest and reflect that there has been a complete lack of insight, reflection and remorse by Miss Campbell. She submitted that the findings against Miss Campbell raise fundamental questions about her honesty. She submitted that her dishonesty, the panel may find, was premeditated. She submitted that Miss Campbell caused an unwarranted risk of harm as she was removing medication from the Hospital, and could have posed a risk to patients, due to depleting stock. She submitted that Miss Campbell has not engaged with these proceedings, and a striking-off order remains the appropriate order to maintain public confidence in the profession.

Decision and reasons on sanction

Having found Miss Campbell's fitness to practise currently impaired, the panel went on to consider what sanction, if any, it should impose in this case.

The panel accepted the advice of the legal assessor.

In reaching its decision, the panel has had regard to all the evidence that has been adduced in this case, case law and had careful regard to the SG published by the NMC.

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 found the following aggravating features:

- An abuse of a position of trust;
- A pattern of misconduct over several weeks;
- Miss Campbell's conduct could have caused unwarranted patient harm if medication was not made available to patients when required;
- Miss Campbell has failed to engage with the NMC's proceedings;
- There is no evidence of reflection or insight by Miss Campbell; and
- There has been no expression of remorse by Miss Campbell.

The panel also found the following mitigating features:

- Miss Campbell has been a registered nurse since December 2012 and there has been no evidence of previous regulatory concerns against her;
- There has been no evidence of actual harm caused to patients; and
- The panel has heard evidence from NMC witnesses that Miss Campbell was a good nurse.

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 public protection issues

identified. The panel decided that it would be neither proportionate nor in the public interest to take no further action.

The panel then considered the imposition of a caution order but again determined that, due to the seriousness of the case, and the public protection issues identified, an order that does not restrict Miss Campbell'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 Miss Campbell's misconduct was not at the lower end of the spectrum and that a caution order would be inappropriate in view of the seriousness of the case. The panel decided that it would be neither proportionate nor in the public interest to impose a caution order.

The panel next considered whether placing conditions of practice on Miss Campbell's registration would be a sufficient and appropriate response. The panel is of the view that there are no practical or workable conditions that could be formulated, given the nature of the charges in this case. Further, there is no evidence that Miss Campbell would engage with such conditions. The misconduct identified, namely dishonesty, is not something that can be easily addressed or remedied. There are no clinical issues in this case. Furthermore, the panel concluded that the placing of conditions on Miss Campbell's registration would not adequately address the seriousness of this case, protect the public nor adequately address the wider public interest.

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

- *A single instance of misconduct but where a lesser sanction is not sufficient;*
- *No evidence of harmful deep-seated personality or attitudinal problems;*

- *No evidence of repetition of behaviour since the incident;*
- *The Committee is satisfied that the nurse or midwife has insight and does not pose a significant risk of repeating behaviour;*

The panel noted that there has been no engagement by Miss Campbell with the NMC or these proceedings. It considered that this was not a single instance of misconduct but a pattern of serious behaviour which indicates potential deep-seated personality or attitudinal problems. The panel considered that there is no evidence of insight, remorse or reflection from Miss Campbell into her actions and the impact they could have had on the Hospital, patients and the wider public perception of the nursing profession. There is no evidence of Miss Campbell having repeated the behaviour since the incidents came to light, however it is aware that she had left her previous post soon after these incidents. Further, the panel considered that although a suspension order would protect the public, it would not mark the seriousness of the concerns or properly address the wider public interest.

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

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

In considering 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?*

Miss Campbell's actions were significant departures from the standards expected of a registered nurse and are fundamentally incompatible with her remaining on the register. The panel was of the view that the findings in this particular case demonstrate that Miss Campbell's actions were serious and to allow her to continue practising would undermine public confidence in the profession and in the NMC as a regulatory body. The panel considered that Miss Campbell's actions do raise fundamental questions about her professionalism, that public confidence would be difficult to maintain should her name not be removed from the register and, a striking off order is the only sanction that would be appropriate in this case to protect the public and maintain professional standards.

The panel noted that in *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin) the Court referred to a non-exhaustive list of factors when considering whether a case fell into the small residual category when striking-off would be a disproportionate sanction in all the circumstances.

In considering the nature, scope and extent of the dishonesty, the panel took account that Miss Campbell's dishonesty, as found proved, relates to four dates in the period 10 September 2019 to 7 October 2019. Whilst not a significant number of occasions, the panel determined that the taking of the medications was persistent over approximately four weeks and involved relatively large amounts of Codeine. In these circumstances, Miss Campbell's misconduct was not momentary but a pattern over a period of time.

The panel decided that Miss Campbell's dishonesty did have a potentially adverse effect upon the Hospital, patients and the reputation of nurses. The panel did note that there was an actual adverse effect upon those working in and around the wards. Witness 1 in her evidence stated that *'It was an awful time for everyone'*. Dishonesty in the workplace can, for a time, place everyone under suspicion and thereby create unnecessary anxiety and

work. In this latter regard, the panel heard evidence of witnesses, at times, checking and auditing drugs alone and together so as to ensure that they were not implicated.

In the above circumstances, the panel determined that Miss Campbell's dishonesty did not fall into the small residual category so as to make a striking-off order disproportionate.

In deciding the sanction of a striking-off order, the panel acknowledged that this may cause Miss Campbell and any dependants hardship. Further, it will severely impact upon her professional reputation.

However, balancing all of these factors and after taking into account all the evidence before it during this case, the panel determined that the appropriate and proportionate sanction is that of a striking-off order.

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

This will be confirmed to Miss Campbell 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 Miss Campbell's own interests until the striking-off 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 Hazlewood. She invited the panel to impose an interim suspension order, to cover the 28-day appeal period.

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, in order to cover the 28-day appeal period.

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

That concludes this determination.